

# **Fundamental Dimensions of Law and Legal Education: Perspectives on Curriculum Reform, Mercer Law School's Woodruff Curriculum, and . . . “Perspectives”**

**by Mark L. Jones\***

The curriculum decisions law schools argue about are more important than we are willing to admit. They are about the meaning of our life's work through our responsibility for the work and lives of our students. They are about how our story will be told, in other words, when it is told truthfully. So, I suggest in conclusion something you probably do not want to hear—I do not want to hear it either—and that is that we are not only entitled to get upset about curriculum matters, we are also obligated to do so. In thirteenth century France, the battle for control of the curriculum of the University of Paris was understood to be a

---

\* Professor of Law, Mercer University, Walter F. George School of Law. Oxford University (M.A.); The University of Michigan Law School (LL.M.).

I am deeply indebted to my colleagues Dick Creswell and Jack Sammons for their very helpful substantive and editing suggestions during the drafting of this Article and earlier documents from which it grew, for their encouragement and support during the curriculum review process that led to its focus on “perspectives,” and for teaching me so much about legal education over the years. I am also deeply indebted to my colleague Dean Gary Simson for conceiving this curriculum symposium project and for being such a conscientious, patient, and thorough editor. Even though none of them will agree with everything I say, this Article would be much poorer without their vital contributions to its development.

struggle for the souls of students. Perhaps they perceived its importance correctly.<sup>1</sup>

This Article is the third in a series of articles that are intended to address in depth my central concerns about the law school curriculum and associated professionalism issues.<sup>2</sup> This larger project, which I have entitled “Fundamental Dimensions of Law and Legal Education,”<sup>3</sup> seeks to make the case for the liberalization of U.S. legal education,<sup>4</sup> although perhaps the term *reliberalization* would be more accurate given the emphasis upon a broad education for lawyers during the first phase in the history of U.S. legal education.<sup>5</sup> Whereas the two prior articles are essentially descriptive—the first being conceptual<sup>6</sup> and the second historical in nature<sup>7</sup>—the present article is essentially normative. Like the first article, and unlike the second, it does not purport to be based on extensive research of the relevant literature, but is rather an extended essay on a curricular philosophy that has been maturing over many years.

---

1. Jack L. Sammons, *Traditionalists, Technicians, and Legal Education*, 38 GONZ. L. REV. 237, 250 (2002-2003) (footnote omitted).

2. For the prior two articles, see Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: A Theoretical Framework*, 26 OKLA. CITY U. L. REV. 547 (2001) [hereinafter Jones, *Theoretical Framework*]; Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: An Historical Framework—A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s*, 39 J. MARSHALL L. REV. 1041 (2006) [hereinafter Jones, *Historical Framework Phase I*].

3. The larger project also envisages one or two coursebooks.

4. The present Article, and indeed the entire project, is animated by the same spirit that animated the pioneering work of a distinguished alumnus of Mercer Law School sixty years ago. See Brainerd Currie, *The Materials of Law Study*, 3 J. LEGAL EDUC. 331 (1951); 8 J. LEGAL EDUC. 1 (1955).

5. See generally Jones, *Historical Framework Phase I*, *supra* note 2.

6. Thus, within the framework of the overall project, the first article puts the educational issues with which I am concerned into a broader theoretical perspective, and lays the project's conceptual foundation, by developing a taxonomic schema for thinking about law, lawyering, and legal education, and by developing an additional theoretical framework for curricular evaluation and comparison that draws upon this schema. The schema and its six sets of “fundamental dimensions of law,” which I term the substantive, structural, practical, social, cultural, and transnational dimensions of law, are discussed further *infra* Part I.A. See generally Jones, *Theoretical Framework*, *supra* note 2.

7. The second article builds upon the conceptual foundation laid in the first article. It is one of several envisaged articles that are intended to put the educational issues with which I am concerned into a broader historical perspective, and to lay the project's historical foundation, by tracing the historical development of U.S. legal education since the founding of the Republic until the present day, and by considering how the six sets of fundamental dimensions of law have in fact been treated in the curriculum of studies during the several different phases in this historical development. See generally Jones, *Historical Framework Phase I*, *supra* note 2.

My original plan for this normative component of the project had been to address subject matter and courses dealing with the cultural dimensions of law (that is, the historical, jurisprudential, and comparative dimensions of law) and the transnational dimensions of law. Although these have been my constant central concern in the project, I decided to address subject matter and courses dealing with the social dimensions of law as well.<sup>8</sup> Thus, I focus on subject matter and courses that are commonly regarded as providing “perspectives” on law and lawyering.<sup>9</sup>

This somewhat modified focus of the present Article has been occasioned by the process of curricular review in which Mercer Law School engaged for the past three years, culminating in the adoption by the faculty of several reforms to Mercer’s “Woodruff Curriculum” in the spring of 2011. More specifically, it has been occasioned by my own involvement in a spirited and passionate debate regarding a proposal to eliminate the curricular requirement that students take at least one perspectives course from a slate of such courses in a Perspectives Block. As amended, the proposal resulted in replacing the requirement with a “strong recommendation” that students take such a course.

This Article maintains that students should take at least one perspectives course during their law school career. It is written with passion and deep conviction by someone who has been teaching law for over thirty years and whose passion and conviction about the importance of “perspectives” has only grown stronger over the years, even in the face of skepticism and opposition.<sup>10</sup> The Article also puts into a broader context not only the particular issue of “perspectives,” but curriculum

---

8. The nature of the social, cultural, and transnational dimensions of law is addressed further *infra* Part I.A.

9. More precisely, then, I focus on subject matter and courses that address the social and cultural dimensions as well as *some* of the transnational dimensions. I will address subject matter and courses dealing with all of the transnational dimensions collectively, including those that are not commonly regarded as providing “perspectives” on law and lawyering, in a future article. Courses currently in the Perspectives Block at Mercer illustrate the type of subject matter addressed. They include: American Legal History; Bioethics and the Law; Comparative Law; European Union Law; Fundamental Perspectives on Law; Gender and the Law; International Law; Jurisprudence; Law and Economics; Law and Religion; Law, Genetics, and Neuroscience; and Race, Racism, and American Law. *Course Descriptions: Perspective Courses*, MERCER LAW, <http://www2.law.mercer.edu/courses/index.cfm?blockid=6> (last visited Feb. 28, 2012).

10. My hope is that it will assist those in the legal academy who wish to defend an existing perspectives course requirement in the face of a proposal to eliminate it or to introduce such a requirement where none had existed before, or at least to support a “strong recommendation” that students take such a course.

issues and curriculum reform in general, and it explains how Mercer's Woodruff Curriculum fits into this broader context.

As the epigraph suggests, curriculum issues are important. Struggles over curriculum issues are struggles for the souls of our students. More than that—in fact *because* of that—they are also struggles for the soul of the legal profession and the society it serves. These related struggles are part of the continuing conversation about what it means to live under the Rule of Law and about how best to secure the values involved in so living. That conversation is a dialogue involving all branches of the profession, and the formative law school curriculum is at its foundation.

I am in complete agreement with the view that the primary mission of a law school is to prepare students for legal practice, although I would also recognize a secondary mission of preparing them for positions of civic and political leadership. For far too long (ever since the “Langdellian Revolution” that began in the 1870s), and despite its great strength in developing the cognitive analytical skills of “thinking like a lawyer,” American legal education has lagged behind professional education in other fields, such as medicine, in its failure to place sufficient emphasis upon the practical dimensions of the discipline. In this respect it has also lagged behind legal education in other developed countries, such as Britain and the countries on the European continent. That began to change in the second part of the twentieth century, with the growth of the clinical movement for example.<sup>11</sup> Significant additional impetus was provided by the MacCrate Commission Report in 1992<sup>12</sup> and the ABA Professionalism Committee Report in 1996.<sup>13</sup> The adoption of the Woodruff Curriculum in 1989 placed Mercer ahead of the curve, and even in a position of national leadership, in this respect.<sup>14</sup>

The publication in 2007 of the Carnegie Report on Legal Education<sup>15</sup> and the Study on Best Practices for Legal Education<sup>16</sup> has intensified

---

11. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 214-16, 240-41 (1983).

12. ROBERT MACCRATE ET AL., AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT].

13. AM. BAR ASS'N, TEACHING AND LEARNING PROFESSIONALISM, REPORT OF THE PROFESSIONALISM COMMITTEE (1996) [hereinafter PROFESSIONALISM COMMITTEE REPORT].

14. The Woodruff Curriculum is discussed further *infra* Part II.

15. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter SULLIVAN ET AL., EDUCATING LAWYERS].

16. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) [hereinafter STUCKEY ET AL., BEST PRACTICES].

the momentum for greater attention to these practical dimensions in legal education.

These developments are to be applauded.<sup>17</sup> I hope it will be clear, then, that in emphasizing the importance of perspectives courses I am not speaking as some “ivory tower academic” who values learning for its own sake. I believe strongly that ensuring that students receive a serious and sustained perspectives exposure during their legal education is of critical importance in preparing them for the practice of law. As I will argue, such perspectives help develop substantive knowledge, practical skills, and qualities of character needed by the good and practically wise lawyer. They are also vital in preparing students for positions of civic and political leadership. Due to the continuing powerful influence on students and faculty of what I call “the neo-Langdellian prejudice” regarding what is of central importance and what is not,<sup>18</sup> the only way to *ensure* that students receive a serious and sustained perspectives exposure is to *require* that they take a course specifically dedicated to that purpose.

Part I provides context for the discussion of curriculum issues and curriculum reform that follows. Part II addresses the Woodruff Curriculum that Mercer Law School adopted in 1989 as a comprehensive and holistic reform of the existing curriculum. The Woodruff Curriculum contained a requirement that all students take at least one course from a slate of courses in a Perspectives Block. Part III evaluates this requirement and perspectives courses generally. It ultimately suggests that the only way to ensure that students receive a serious and sustained perspectives exposure is through the imposition of a perspectives course requirement and the incorporation of perspectives material into other courses.

---

17. Given my own particular holistic philosophy of legal education, which emphasizes preparing the “complete lawyer” for practice through the optimal balance in exposure to, and experience with, all the relevant dimensions of law and lawyering, I am especially gratified that many law schools are now placing a greater emphasis on the development of lawyering skills, professionalism, experiential learning, and public service.

18. The original “Langdellian prejudice” de-emphasized courses related to the practical dimensions of law and lawyering as well as courses related to the social, cultural, and transnational dimensions of law (and thus perspectives courses). What I call the “neo-Langdellian prejudice” now accords increasing value to the former but retains its Langdellian prejudice against the latter.

## I. PUTTING CURRICULUM REFORM IN CONTEXT

The jurisprudential, historical, and practical perspectives in Part I provide broader context for the discussion of the Woodruff Curriculum in Part II and the discussion of perspectives courses in Part III, as well as for the consideration of curriculum issues and curriculum reform in general.

*A. Theoretical Framework—Fundamental Dimensions of Law and Lawyering*

I have found it helpful in my scholarly activities and in my teaching to think in terms of a taxonomic schema that identifies six sets (and various subsets) of “fundamental dimensions of law”—the substantive dimensions of law, the structural dimensions of law, the practical dimensions of law, the social dimensions of law, the cultural dimensions of law, and the transnational dimensions of law.<sup>19</sup> Because these are the fundamental dimensions of a modern legal system and represent different types of “sources of law,” they are also the fundamental dimensions of lawyering in a modern legal system.<sup>20</sup> Moreover, because these fundamental dimensions are addressed in the various courses in

---

19. For an expanded account of this theoretical framework, see Jones, *Theoretical Framework*, *supra* note 2, at 562-94. For a more condensed account, see Jones, *Historical Framework Phase I*, *supra* note 2, at 1164-70. Use of the term “dimensions” of law is intended to evoke a broad concept of law that includes much more than “substantive law” and to express the notion that all these “dimensions” are appropriately conceived as aspects or parts of law itself rather than—for example, in the case of the social or cultural dimensions—as something “external” to law. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 564-65. Use of the term “fundamental” connotes the idea that at least some dimensions within *each* set (and indeed within each subset) of dimensions, and various aspects of those dimensions, are fundamental for law and legal education. It also connotes the idea that the boundaries separating the sets and subsets can serve as the basis for a classificatory system of law and legal education. For further discussion, see *id.* at 563-64.

20. By “sources of law,” what is meant, primarily, is that they represent different kinds of human influences that operate as causal factors in producing legal outcomes. The good lawyer must be able to identify, process, and frequently manipulate the multiplicity of causal factors related to various fundamental dimensions of law that have an actual or potential, direct or indirect role in shaping the decisions leading to those outcomes. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 594-601, and *infra* Part III.A.

the law school curriculum, they are fundamental dimensions of legal education as well.<sup>21</sup>

I recognize that the articulation of such a taxonomic schema is an exercise in analytical jurisprudence that may not be to everyone's taste.<sup>22</sup> However, I have found the schema to be a powerful tool that can be put to many different uses.<sup>23</sup> Such intellectual constructs as the taxonomic schema *should* have their place in our thinking, but like

---

21. Courses in the law school curriculum can be grouped and organized into six similar categories (and subcategories) that concern the six sets (and subsets) of fundamental dimensions of law and lawyering. For an account of an additional theoretical framework for evaluating how the fundamental dimensions are treated within the law school curriculum, as measured by the degree to which the curriculum emphasizes the six sets (and various subsets) of fundamental dimensions, and the degree to which students are exposed to those dimensions during their law school education, see Jones, *Theoretical Framework*, *supra* note 2, at 608-29. For a more condensed account, see Jones, *Historical Framework Phase I*, *supra* note 2, at 1170-74. For an application of this framework in evaluating various types of law studies curricula during the first phase in the history of U.S. legal education (from the founding of the Republic until the 1860s), see *id.* at 1174-94.

22. Although the schema appears to fragment law and lawyering in a highly artificial and reductionist manner, I am using it, paradoxically, as part of a strategy to combat the reductionist fragmentation of law and lawyering that led to a devaluing of perspectives subject matter in the law school curriculum, and to help restore a properly integrative and holistic understanding of law and lawyering, by using the same kinds of tools that led to a fragmented and reductionist understanding in the first place.

23. Elsewhere, I have identified three main ways in which the fundamental dimensions schema could be used to examine a particular legal system in any or all of its dimensions. Thus, it can be used: (1) To undertake an "objective" and "neutral" examination of a legal system from an external point of view; (2) To undertake a hermeneutical exploration of the "subjective" internal point of view of those who inhabit a legal system, but again from an external point of view; and (3) By those who share the internal point of view as they undertake law-related activities within their own legal system. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 566-68 (also warning against the risk of possible distortion due to the influence of one's own particular "perspective" and "subjectivity"). I have used the schema in my teaching to demonstrate the importance of understanding the whole context, and to facilitate efforts at "cultural immersion," when making comparisons among the legal experiences of different peoples across time and across space. In this regard, compare Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law* (pts. I & II), 39 AM J. COMP. L. 1, 343 (1991) (identifying several different kinds of "legal formants" of legal rules and legal outcomes that bear some resemblance to various types of fundamental dimensions of law in my own fundamental dimensions taxonomy). As discussed *supra* note 21, in an earlier article I used the schema to illuminate various types of law studies curricula during the first phase in the history of U.S. legal education. Here, I use the schema to illuminate the contemporary law school curriculum. More specifically, I use it to illuminate curriculum issues in general, to analyze and evaluate Mercer Law School's Woodruff Curriculum, and to highlight the importance of "perspectives" subject matter to a proper understanding of law and lawyering and hence the need to ensure that law students receive a serious and sustained exposure to such subject matter during their legal education.

everything else, they should, of course, be kept *in* their place.<sup>24</sup> The taxonomic schema is intended to capture the complex “multicontextual” or “multidimensional” reality of law and of lawyering in a modern legal system by conveying a sense of the total context, and reality, of a modern legal system as a functioning whole.<sup>25</sup> Although analytically

---

24. For a somewhat playful attempt to do this by articulating a possible seventh set of fundamental dimensions of law—the postmodern dimensions of law—see Jones, *Theoretical Framework*, *supra* note 2, at 601-08. The attempt is playful, at least in part, because even the most ardent and radical postmodernist cannot avoid intellectual constructs (whatever the particular socially constructed origin of such constructs might be), as indeed is evidenced by postmodernists’ very use of language to make their arguments and even to engage in the activity of textual deconstruction. That is simply the game modern humans play, especially modern “homo academicus.” For the origin of the phrase “homo academicus” (for which, regrettably, it seems I can claim no credit), see PIERRE BOURDIEU, *HOMO ACADEMICUS* (Peter Collier trans., 1984).

The alternatives to using such intellectual constructs are a return to the assumed chaos of the primordial human mind or a mystical descent into the darkness and silence of the Godhead beyond all sense impressions, thoughts, and conceptualizations. But then, the latter is a different type of game altogether, although not one without a certain appeal. Drawing upon the tradition of the *Via Negativa* in Western Christian mysticism and the tradition of Zen Buddhism in Eastern mysticism, Matthew Fox describes this latter alternative in the following terms:

The Enlightenment—the en-light-en-ment—has rendered all of us who live in Western civilization citizens of the light. And of lights. Questers after left-brain—which is light-oriented—satisfaction . . .

How does one learn to recover the darkness and to befriend it again? And how does a people learn this? . . .

In addition to meditating *on* our very real relationship to darkness and to its ever-present companion, mystery, we also need to let go of all meditations, all images, all likenesses, all projections, all naming, all contact with isness. The need for silence that Zen speaks of, that wisdom literature celebrates, that Eckhart praises, and that Merton calls for is not just about oral silence. Silence means the letting go of all images—whether oral ones or auditory ones or visual ones or inner ones or cognitive ones or imaginative ones. Whether of time or of space, of inner or of outer. It is a radical letting go of language. A letting language go. A concentration on what is non-language, non-music, non-self, non-God. It is being. A being still. . . . In this sinking into silence and non-imaging we do not have to be afraid, for God is “superessential darkness,” and to make contact with the darkness is to make contact with the deepest side of the Godhead. . . .

And there can be no symbols or images that are allowed to hang around—not even our names and symbols for God can go unchecked.

MATTHEW FOX, *ORIGINAL BLESSING: A PRIMER IN CREATION SPIRITUALITY PRESENTED IN FOUR PATHS, TWENTY-SIX THEMES, AND TWO QUESTIONS* 134-37 (1983).

25. We might usefully refer to this as “the layered contextual complexity of law and lawyering.” This phrase is adapted from UGO A. MATTEI ET AL., *SCHLESINGER’S COMPARATIVE LAW: CASES-TEXT-MATERIALS* 262 (7th ed. 2009) (noting the “layered complexity” of legal systems, in which the different layers may have a different relationship to various foreign legal systems, and attributing the term “layered complexity” to Adam

distinct from every other set, each set of fundamental dimensions is part of an overall context and reality supplied by all of them together, *and every legal situation confronting the lawyer occurs within this overall context and reality.*

In the same way that different types of tissues, organs, fluids, structures, and functionalities are parts of the organic living system known as a human being, the different types of fundamental dimensions of law are parts of the living social system known as the legal system.<sup>26</sup> They are the diverse threads in the “seamless web” of the law.<sup>27</sup> And just as the practice and teaching of holistic medicine identifies and appropriately addresses all the interdependent dimensions of the human being relevant for a properly integrative response to the whole person—physical, mental, emotional, social, and spiritual—so too the practice and teaching of holistic lawyering must identify and properly address all the interdependent dimensions of the legal system relevant for a properly integrative response to the legal situation.<sup>28</sup>

---

Czarnota & Martin Krygier, *Revolutions and the Continuity of European Law*, in *REVOLUTIONS IN LAW AND LEGAL THOUGHT* 90 (Zenon Bankowski ed., 1991).

26. For a good account comparing the mechanistic and reductionist Cartesian-Newtonian worldview with an ecological and holistic worldview involving a systems approach to the understanding of living biological and social systems, see Fritjof Capra, *Turning Point: A Science of Living Systems*, [http://www.sfsu.edu/~holistic/activism/a\\_science\\_of\\_living\\_systems.html](http://www.sfsu.edu/~holistic/activism/a_science_of_living_systems.html) (last visited Feb. 28, 2012).

27. See Jones, *Theoretical Framework*, *supra* note 2, at 597 nn.74, 75 (elaborating upon the image of the “seamless web” and discussing its possible origins). The six sets of fundamental dimensions are systemically pervasive (so that the fundamental dimensions are dimensions of each other), and mutually interactive (so that changes in one or more dimensions can frequently produce changes in other dimensions). For further discussion, see *id.* at 571-73 (explicating the “multidimensional” or “multicontextual” reality of law and lawyering in a modern legal system, including these two features, in six analytical steps).

28. For a discussion of holistic medicine, see *Holistic Medicine*, THE FREE DICTIONARY, <http://medical-dictionary.thefreedictionary.com/Holistic+Medicine> (last visited Feb. 28, 2012); *What is Holistic Medicine?*, HOLISTIC MED., <http://www.holisticmed.com/whatis.html> (last visited Feb. 28, 2012). As indicated in the text, I am using the term “holistic lawyering” in the sense of lawyering that understands the legal situation in all its complexity and multidimensionality. In addition, the term “holistic lawyer” can also be used to convey something similar to the actual practice of holistic medicine, that is, a lawyer who seeks to serve the client as a whole person and thus “uses a multi-disciplinary approach for her clients’ immediate needs, by examining the spiritual, mental, and emotional conditions that caused their legal challenges or dilemmas to arise.” Reva Brown, *Why Go to a Holistic Lawyer*, INTUIT, <http://business.intuit.com/directory/article-why-go-to-a-holistic-lawyer> (last visited Feb. 28, 2012). I am certainly not opposed to such an approach. However, even under a more conventional approach that does not seek to respond to the client as a whole person but just to the client’s more narrowly understood “legal situation,” it is necessary to practice an expansive and integrative form of lawyering to serve just the client’s “legal” needs.

With these preliminary considerations out of the way, we can now set about constructing the taxonomic schema as it applies to a modern legal system.<sup>29</sup> The discussion of each set of fundamental dimensions will include a few illustrative courses whose primary emphasis is upon dimensions within that particular set.<sup>30</sup>

The *substantive dimensions of law* concern in particular the legal norms governing the relationship of individuals (and associations of individuals) with each other and with the state itself.<sup>31</sup> Illustrative courses include Contracts, Torts, Property Law, Criminal Law, and various courses in the area of administrative law.

The *structural dimensions of law* concern in particular those legal norms governing legal institutions, legal actors, and legal processes, which together make up the “law machine.”<sup>32</sup> Illustrative courses include Constitutional Law, Legislative Process, Civil Procedure, Criminal Procedure, Evidence, and Legal Professions (structure and roles aspect).

---

29. Clearly, construction of the schema builds upon the work of several other scholars who have analyzed the structure of legal education or the nature of a legal system. See Jones, *Historical Framework Phase I*, *supra* note 2, at 1169 n.450 (identifying Alfred Zantinger Reed (structure of legal education) and Karl Llewellyn, H.L.A. Hart, and John Henry Merryman (nature of a legal system)).

30. Use of the expression “primary emphasis” implies, of course, that a course may incorporate *some* emphasis on other dimensions, either within that particular set of fundamental dimensions or within another set of fundamental dimensions. See *infra* notes 49, 51, and Part III.B. The notes following the description of each set of fundamental dimensions will also indicate possible subsets of that set.

31. Possible subsets of the substantive dimensions of law might be the following: private law dimensions and public law dimensions. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 574-76 (also discussing different types of legal norms such as rules, principles, conceptions, and standards).

32. Possible subsets of the structural dimensions of law might be the following: the legal institutions dimensions, the legal actors dimensions, and the legal processes dimensions; or, alternatively, the legislative dimensions, the administrative dimensions, the adjudicative dimensions, the legal profession dimensions, and the legal education dimensions. For further discussion, see *id.* at 577-79 (also discussing the dimensions of legal extension and legal penetration into the social fabric).

Although the substantive and structural dimensions together comprise the *doctrinal (or normative) dimensions of law*, and represent “substantive law,” it is important to separate them analytically. For further discussion, see *id.* at 578 n.43. With respect to the relationship between the doctrinal dimensions and the jurisprudential dimensions, and specifically certain species of jurisprudential thought within the categories of analytical and normative jurisprudence that have focused on the doctrinal dimensions, see *id.* (identifying Langdellian legal science, legal process jurisprudence, and Dworkin’s individual rights jurisprudence). See also Jones, *Historical Framework Phase I*, *supra* note 2, at 1105-21 (discussing natural law theory and early American legal science).

The *practical dimensions of law* concern in particular the substantive knowledge, the practical skills, and the qualities of character and professional values lawyers need when performing their various roles and tasks within the legal system.<sup>33</sup> Illustrative courses include Legal Analysis, Legal Writing, Legal Research, Counseling, Negotiations, Trial Practice, Moot Court Competition, Legal Ethics, and Legal Professions (values aspect).

The *social dimensions of law* concern in particular those other disciplines such as political science and various other social sciences (economics, psychology, sociology, anthropology, etc.) through which the “socio-legal world” and indeed the entire social order are intellectualized.<sup>34</sup> Illustrative courses include: Law and Politics, Law and Economics, Law and Society, Law and Anthropology, Law and Psychiatry/Psychology, Law and Literature, Law and Religion.<sup>35</sup>

The *cultural dimensions of law*, which are the historical, jurisprudential, and comparative dimensions of law, concern in particular the roots of law-related phenomena in the past, in profound speculation, and in the legal experience of other peoples.<sup>36</sup> Illustrative courses include

---

33. Possible subsets of the practical dimensions of law might be the following: the substantive knowledge dimensions, the practical skills dimensions, and the professionalism dimensions. The substantive knowledge dimensions concern theoretical knowledge about all six sets of fundamental dimensions of law. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 580-81 (also discussing the important category of “nonofficial” legal actors).

34. Exploration of the social dimensions of law is concerned with examining the actual decisions and actions of official and nonofficial legal actors from the perspective of: the behavioral or social factors influencing those decisions and actions; the product of those decisions and actions themselves; and the behavioral or social effects of those decisions and actions. Possible subsets of the social dimensions of law might be the following: the political dimensions, the economic dimensions, various other social science dimensions, the literary dimensions, and the religious dimensions.

35. Regarding the relationship between the social dimensions and such interdisciplinary courses (including the strength and even the very (re)recognition of the social dimensions as such), on the one hand, and the jurisprudential dimensions of law, specifically the category of “social jurisprudence,” on the other, see Jones, *Theoretical Framework*, *supra* note 2, at 583 n.48, 585 n.49, 586 n.54, 588 n.57 (identifying sociological jurisprudence, American legal realism, the law and economics movement, the critical legal studies movement, the feminist legal movement, the law and literature movement, and various types of postmodern legal thought). *See also infra* note 36 and accompanying text (identifying different categories of jurisprudence).

36. Possible subsets of the cultural dimensions of law might be the following: the historical dimensions, the jurisprudential dimensions, and the comparative dimensions. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 585-88 (also distinguishing between the categories of analytical jurisprudence (primarily positivist, descriptive, and focused on the conceptual), normative jurisprudence (primarily critical, prescriptive, and focused on the moral), and social jurisprudence (descriptive and/or

courses in the areas of Legal History, Jurisprudence, and Comparative Law.

The *transnational dimensions of law*, which are a different order of dimensions from the preceding five sets, concern in particular a vast body of ever-expanding transnational law as well as the processes of “transnationalizing” the national economic, social, and legal environments.<sup>37</sup> Illustrative courses include International Law, Human Rights Law, International Conflict of Laws, International Business Transactions, Immigration Law, and European Union Law.

Each set of fundamental dimensions supplies a level of context, reality, and meaning and enables the other dimensions and any legal situation to be seen in a broader perspective.<sup>38</sup> However, it is those courses

---

prescriptive and focused on the social) and noting the manifestation of these three jurisprudential perspectives in the context of theories of adjudication and legal reasoning). My use of the term “cultural” to describe this set of fundamental dimensions is derived from Brainerd Currie and is to be distinguished from cultural in the sense of social. See Jones, *Historical Framework Phase I*, *supra* note 2, at 1168 n.448.

37. Possible subsets of the transnational dimensions of law might be the following: transnational law dimensions and the transnationalization dimensions, the former including public international law dimensions, private international law dimensions (in a narrow sense, international conflict of laws; in a broader sense, international business transactions), immigration law dimensions, regional integration dimensions, and foreign law dimensions. For further discussion, see Jones, *Theoretical Framework*, *supra* note 2, at 589-94 (also explaining the distinction between the preceding five sets of fundamental dimensions, concerned with phenomena occurring solely within a national context, and the transnational dimensions, concerned with phenomena that cross national borders and with external influences and linkages, as well as the distinction and relationship between the transnational dimensions and the comparative dimensions).

38. The same may be said regarding each subset of fundamental dimensions and indeed regarding each individual dimension. In addition to the images of a living organic system and a “seamless web,” see *supra* notes 26-27 and accompanying text, the images of concentric circles or of nested Chinese boxes or Russian dolls may help further illuminate this multicontextual or multidimensional reality. Thus, individuals (and associations of individuals) are part of a larger organized communal reality, comprising the state and its subjects, in which their conduct is subject to governmental control in the form of legal norms laid down by the state. The *substantive dimensions of law* put the conduct of individuals into the context of government by law. The law is part of a larger structural reality, comprising a legal system within which law develops and within which it is applied and enforced. The *structural dimensions of law* put law into the broader context of a legal system. The law and the legal system are part of a larger practical reality, comprising a *working* legal system that is operated by official legal actors (legal practitioners, judges, legislators, law professors, and so on) and that affects, and is used by, nonofficial legal actors. The *practical dimensions of law* put the law and the legal system into the broader context of legal practice. The law, the legal system, and legal practice are part of a larger social reality, comprising both a “socio-legal world” that animates the working legal system as it “really” operates and indeed the entire social order in which the law, the legal system, and legal practice are all interwoven with other social phenomena in a richly textured

addressing subject matter related to the social and cultural dimensions of law (as well as some of the transnational dimensions) that have been regarded traditionally as “perspectives” courses.<sup>39</sup> This restricted usage of the term “perspectives” reflects a narrow view of law, a neo-Langdellian prejudice, in which courses addressing subject matter related to the substantive, structural, and practical dimensions of law are “real law,” and other courses, addressing the social and cultural dimensions (as well as various of the transnational dimensions), are not “real law” but at best provide perspective *on* “real law.” In other words, they are easily understood as being concerned with something *external*, outside “the law.”<sup>40</sup> In fact, however, the perspective gained from attending to these other dimensions of law is a broader *internal perspective on a situation*

---

social fabric. The *social dimensions of law* put the law, the legal system, and legal practice into a broader social and intellectual context. The law, the legal system, legal practice, and their social dimensions are part of a larger cultural reality, comprising the very roots or foundations in which they are ultimately embedded. The *cultural dimensions of law* put the law, the legal system, legal practice, and their social dimensions into an even broader context that transcends the situatedness of our particular time, intellectual horizon, and place. National legal systems (comprising the preceding five sets of fundamental dimensions) are all part of a larger global or transnational reality, comprising the worldwide economic, social, and legal environment in which goods, services, capital, people, information, ideas, and various other phenomena, cross national borders, both within and beyond different regions of the world, at an ever-increasing and accelerating rate. The *transnational dimensions of law* put national legal systems into their broader global context.

39. As reflected *supra* note 36, given their concern with the very foundations or roots of law, those courses addressing the cultural dimensions of law—courses such as Legal History, Jurisprudence, and Comparative Law—can be regarded as courses concerned with *fundamental* “perspectives.”

40. Attitudes toward courses addressing subject matter related to the transnational dimensions of law as a whole are perplexing. Many of these courses ought to be considered “the real thing” too, particularly given the obvious direct impact of the areas of transnational practice on life prospects (for example, immigration law) and/or bank accounts (for example, international business transactions) and the origin of much transnational law in familiar and now traditional formal sources of U.S. law, such as statutes and administrative regulations. That such courses are still relatively marginalized in the mainstream law school curriculum in the United States is the result not only of a type of neo-Langdellian prejudice but of another type of prejudice too. But this is a topic for another day and another article.

arising within the legal system.<sup>41</sup> Understood in this sense, use of the term “perspectives” to refer to such courses is perhaps less problematic.

*B. Historical Narrative—Rise of the Langdellian Prejudice and the Loss of Perspective*

The first phase in the history of U.S. legal education extends from the founding of the Republic until the 1860s. During this time there were three different settings in which lawyers might receive a formal legal education, frequently following a period of other study at a college. Most common was apprenticeship with a practicing lawyer. However, it was also possible to receive institutionalized legal instruction in a college or university law program or at an independent law school.<sup>42</sup> Many of the curricula in the apprenticeship and college or university law programs settings displayed a striking breadth of coverage, and there was a remarkable emphasis upon a broad education for lawyers in *all*

---

41. Because this perspective is achieved by the lawyer “looking around” at, or responding to, the context of the situation, one could also think of the matter as gaining a broader internal perspective *from* the vantage point of that situation within the legal system. Returning to the earlier images of concentric circles, nested Chinese boxes, or Russian dolls, *see supra* note 38, the legal situation can be pictured at the very center. Moreover, because each set of fundamental dimensions represents a level of reality for the legal situation, it is misleading to characterize the social and cultural dimensions as not being “real law.” Indeed, following Michael Polanyi, they can even be seen as higher levels of reality in a hierarchy of such levels and thus as “more real” than the levels below them. *See* Jack Sammons, *Confronting the Three Apprenticeships*, in *TOWARD HUMAN FLOURISHING: THE ROLE OF CHARACTER, PRACTICAL WISDOM, AND PROFESSIONAL FORMATION* (Mark L. Jones et al. eds., forthcoming Jan. 2013) [hereinafter *TOWARD HUMAN FLOURISHING*] (quoting MICHAEL POLANYI, *KNOWING AND BEING: ESSAYS FOR MICHAEL POLANYI* 155 (Marjorie Grene ed., 1969)) (“When reality is defined in these [multi-level] terms, so that at the highest level of our knowledge reality offers an ‘indefinite range of unexpected manifestations,’ the intangibles at the highest level—justice, beauty, morality, religion, *etc.*—suddenly appear as more real than the tangible at the lowest and . . . necessary to understanding the tangible, necessary to considering it as real.”).

42. Perhaps the most famous independent law school is the Litchfield Law School. Sometimes such institutionalized legal instruction was combined with apprenticeship. For a detailed discussion of all these settings and of the curricula of studies followed in them, *see* Jones, *Historical Framework Phase I*, *supra* note 2, at 1062-95. However, during the latter part of the period many of those practicing law may have received no formal legal education at all. *See id.* at 1059-61 (discussing the lowering of educational standards and requirements for admission to the Bar that occurred during the second part of this period, partly or even largely as a result of the atmosphere created by Jacksonian Democracy in the 1830s and 40s, including a dramatic decline in the percentage of jurisdictions requiring a period of apprenticeship training for admission as well as the prevalence of oral and usually casual bar examinations).

settings.<sup>43</sup> By the time they completed their formal legal education, students in all three settings were adequately exposed to all six sets of fundamental dimensions of law through the strategy of a required curriculum of studies. The remarkable emphasis upon a broad education for lawyers likely reflected the prevailing professional ideal of the lawyer-statesman and the political philosophy of civic republicanism underpinning that ideal.<sup>44</sup> It was widely understood that law students should be prepared for both legal practice and political leadership by helping them become liberally educated lawyer-statesmen, possessing the character virtues of practical wisdom and civic-mindedness, who would serve their clients and the Republic by doing their jobs in a broad-minded way.<sup>45</sup>

After this first phase in its history, U.S. legal education gradually became centered in university law schools.<sup>46</sup> Robert Stevens provides the following succinct summary of the main stages in the process:

In the 1870s, legal education essentially meant a requirement for some period of law study followed by a bar exam. The second stage of growth had been recognition of law school as an alternative to apprenticeship.

---

43. This latter evaluation includes the independent law schools and takes into account various factors in addition to the curricula in the law programs themselves, in particular the exposure to certain subjects that students received during a prior college education (or its equivalent). For a detailed curricular analysis and evaluation, see *id.* at 1176-89. For the methodology used, see *id.* at 1170-76.

44. See *id.* at 1121-52 (examining the nature and general influence of the lawyer-statesman ideal, with its emphasis upon the twin character virtues of practical wisdom and civic-mindedness, and the political philosophy of civic republicanism, and explaining that the lawyer-statesman ideal served to inspire lawyers both as legal practitioners and as political leaders of the Republic), 1152-64 (evaluating the influence of the lawyer-statesman ideal upon legal education specifically), and 1189-94 (summarizing the influence on the curriculum of the natural law and legal science elements in the prevailing jurisprudence and of the professional ideal of the lawyer-statesman and the political philosophy of civic republicanism underpinning that ideal).

45. See *id.* at 1152-64, 1192-94 (discussing the pedagogical goals of legal educators in apprenticeship training, in college or university law programs, and at independent law schools). The twin character virtues of practical wisdom and civic-mindedness are related in that deliberating and acting in a particular way (with practical wisdom), procedurally, produces a particular public good appropriate to the context, substantively, and the disposition to deliberate and act in this way arises out of a civic-minded concern to achieve that substantive good. For a sophisticated philosophical account of the ideal of the lawyer-statesman, see ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEAS OF THE LEGAL PROFESSION* (1993). See also Jones, *Historical Framework Phase I*, *supra* note 2, at 1122-28 (discussing Kronman's account of the professional ideal of the lawyer statesman in the nineteenth century).

46. For a good discussion of pertinent developments related to this process, see generally STEVENS, *supra* note 11.

The third stage was the requirement of law school without the alternative of office study, and the fourth was recognition solely of ABA-approved law schools coupled with the requirement of attendance at college as well. The third and fourth stages in the movement had begun in the 1930s and were to come to fruition in the postwar years.<sup>47</sup>

Beginning in the 1870s with the reforms of the curriculum instituted by Christopher Columbus Langdell at Harvard Law School,<sup>48</sup> the mainstream curriculum became both narrower and seriously disconnected from the needs of the legal profession. By the mid-1920s, the mainstream law school curriculum had significantly reduced the emphasis placed upon the practical dimensions of law. It also placed no significant emphasis upon the social dimensions of law, no significant emphasis upon the cultural dimensions of law, and no significant emphasis upon the transnational dimensions of law.<sup>49</sup> In short, there

---

47. *Id.* at 205. The American Bar Association (ABA) was established in 1878. *Id.* at 27, 92. The Association of American Law Schools (AALS) was established in 1900. *Id.* at 96-97. The establishment of these organizations was part of a more general attempt to raise the standards of the profession following the decline in educational standards and requirements for admission to the Bar that had occurred during the second part of the first phase. *See supra* text accompanying note 42. The process of tightening up state requirements for admission to the bar was already well underway before 1890, and by the 1920s most states required some specific period of formal training, either in a law office or at a law school, as well as the successful completion of a written bar examination (although some states granted the so-called “diploma privilege,” whereby the bar examination was waived for the graduates of certain law schools). *See STEVENS, supra* note 11, at 25-27, 33 n.44, 94-95, 98-99, 174, 182 n.27.

48. For a discussion of Langdell’s reforms at Harvard Law School and their influence on other law schools, see, for example, ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA 343-45, 354-68, 369-88, 391-94 (Arno Press 1976) (1921); STEVENS, *supra* note 11, at 36-39, 61-64, 96 n.33.

49. *See* ALFRED ZANTZINGER REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 252-56 (Arno Press 1976) (1928) (discussing the subjects included in law school curricula in 1925-1926). The statement in the text should perhaps be qualified with respect to the cultural dimensions of law, insofar as the study of cases and other texts in doctrinal courses does, at least incidentally, inevitably convey a sense of the historical context and the jurisprudential paradigm within which the cases are decided. Similarly, subjects taught by the case method not only impart knowledge of substantive law but also develop the practical skill of legal reasoning and associated dispositions. These are examples of how a student can receive some *generalized* exposure to a set of fundamental dimensions of law (here, the cultural dimensions and the practical dimensions respectively) when that exposure is incorporated into a course with a different primary emphasis because it is inherent in the materials used for, or otherwise informs and is reflected in the teaching of, the course. The development of the mainstream law school curriculum from

was no significant emphasis upon the subject matter of perspectives courses.<sup>50</sup> Despite some improvements in later years,<sup>51</sup> the social, cultural, and transnational dimensions of law, and thus perspectives subject matter, continue to be relatively neglected and marginalized within the curriculum.<sup>52</sup>

---

the 1870s until the 1920s will be examined in greater depth in the next historical article in my Fundamental Dimensions of Law and Legal Education series of articles, addressing the second phase in the history of U.S. legal education (the phase of Langdellian legal science).

50. This meant, of course, that members of the legal profession had to compensate for these deficiencies in legal education through some combination of a broad pre-law education, self-education, on-the-job training, and the articulation and maintenance of professional standards by the organized bar. For the same reasons, the narrowing of legal education did not necessarily entail an undermining of the lawyer-statesman ideal. Moreover, to some extent, even a more narrowly focused legal education may have still supported the ideal. For example, according to Anthony Kronman, the case method of teaching—at least when done well—works to develop a student’s practical wisdom (in particular the core capacity of sympathetic detachment) and civic-mindedness, the twin virtues of the lawyer-statesman. KRONMAN, *supra* note 45, at 109-21; *see also id.* at 154 (“Whatever other ends it serves, the case method of law teaching also promotes the character traits of prudence and public-spiritedness that the ideal of the lawyer-statesman stressed, and long after the disappearance of the conditions that originally sustained it, helps to keep that ideal alive in the habit-forming classroom experiences to which all beginning lawyers are exposed.”). Not everyone agrees with Kronman’s claim, however, that the lawyer-statesman ideal remained highly influential throughout most of the twentieth century. For further discussion of this disagreement, see Jones, *Historical Framework Phase I*, *supra* note 2, at 1139 n.361.

51. These improvements are due in particular to the development of elective courses and the incorporation of perspectives subject matter into other courses. The development of the elective curriculum after the first phase in the history of U.S. legal education—an elective curriculum that became increasingly broader after the end of the second phase (*see supra* text accompanying note 49)—and the remarkable proliferation of courses addressing the social, cultural, and transnational dimensions of law in recent years are documented in a series of curriculum surveys and studies that have been conducted over the decades. *See further* Jones, *Historical Framework Phase I*, *supra* note 2, at 1174 n.458, 1196 n.570 and accompanying text. The incorporation of “perspectives” subject matter into other courses is an example of how a student can receive some *specific* exposure to a set of fundamental dimensions of law when that exposure is incorporated into a course and/or course materials with a different primary emphasis. The situation with respect to the practical dimensions of law has also clearly improved during this period. The development of the mainstream law school curriculum from the 1920s will be examined in greater depth in one or more subsequent historical articles in my Fundamental Dimensions of Law series of articles, addressing the third and fourth phases in the history of U.S. legal education (that is, the legal realist phase, lasting from the 1920s until the 1960s, and the postrealist and postmodernist phase, lasting from the 1960s until the present, respectively).

52. As will be explored further *infra* Part III.B, the availability of a wide range of elective courses and the incorporation of perspectives subject matter into other courses represent a partial and inadequate solution for redressing the dysfunctional curricular

*C. Professional Formation: Becoming a Good and Practically Wise Lawyer*

It is just as imperative for legal educators today, as during the first phase of legal education, to form liberally-educated lawyers, possessing the character virtues of practical wisdom and civic-mindedness, who will serve their clients and the Republic by doing their jobs in a broad-minded way. I now inquire more closely into the nature of these virtues.

*1. Practical Wisdom*

Good lawyers are practically wise lawyers.<sup>53</sup> Practical wisdom enables

---

imbalance created after Langdell and for reintegrating the social, cultural, and transnational dimensions within the mainstream law school curriculum. Moreover, any mitigation of the narrowing of the law school curriculum that may have resulted from students receiving a broad general college education before coming to law school has diminished significantly during the last few decades with a dramatic decline in the percentage of law students possessing the once traditional background in the liberal arts. See, e.g., DAVID L. KIRP, HUMAN RESOURCES, MANAGEMENT, AND PERSONNEL: SHAKESPEARE, EINSTEIN, AND THE BOTTOM LINE: THE MARKETING OF HIGHER EDUCATION 5, 53-54 (2003).

53. For a more detailed version of the schematic account given here, see Mark L. Jones, *Practical Wisdom, Vocation, and Professional Formation: A Schematic Account*, in TOWARD HUMAN FLOURISHING, *supra* note 41. Regarding the central role of practical wisdom in good lawyering, see STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 67-69 (asserting that “[i]n order to succeed as lawyers, students must acquire the habit of mind needed for competent law practice, which in medical education is referred to as ‘clinical judgment’ and by some legal scholars as ‘practical judgment’ or ‘practical wisdom’”). For a good discussion of the importance of good practical judgment in everyday lawyering activities, see Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 32-33 (2002) [hereinafter Aaronson, *Thinking Like a Fox*], quoted by STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 68-69:

Although skill in legal reasoning is not as closed a process of reasoning as sometimes supposed, everyday lawyering activities are even less subject to formally structured deliberation. The factual situations are almost always fraught with complications, contingencies, and uncertainties. The areas of inquiry have no pre-definable limits and include small and large matters. Whether gathering information, communicating with others, planning courses of action, or contemplating client options, attorneys constantly make judgment calls. A lawyer's reliance on judgment runs the gamut from how to order and frame questions when interviewing or counseling clients, to what research leads to follow, to how to decide major issues of legal strategy, to how to identify and seek to reconcile conflicting moral obligations. What the client regards as the problem may or may not be the problem. There may be a legal solution, but it is not clear that it would be the best solution. In short, in the practice of law, how best to proceed and what exactly to say and do are almost always problematic.

the lawyer to do “the right thing in the right way at the right time.” More specifically, it enables the lawyer to engage, almost instinctively, in good practical reasoning about ends as well as means and to translate good judgment into action. The practically wise lawyer draws upon an ensemble of deeply ingrained and seamlessly integrated professional attributes—theoretical knowledge, practical skills, and qualities of character<sup>54</sup>—in a manner that is appropriately responsive to context.<sup>55</sup>

---

STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 68 (quoting Aaronson, *Thinking Like a Fox*, *supra*, at 32). Stuckey and his co-authors consider that law schools should make it a central goal to develop their students’ capacity for practical wisdom:

Students arrive in law school with varying abilities to exercise judgment, but they do not have the professional knowledge or experience to exercise practical judgment in legal settings. Law schools have a special obligation to help students begin to develop practical judgment in legal settings, though the task neither begins nor ends in law school. For law schools “[t]o make judgment a curricular focus, rather than just an aside, requires coming to grips with not only what it means to say someone has and uses good judgment, but also to what extent and under what circumstances practical judgment is a skill and disposition that can be learned.”

*Id.* at 70 (quoting Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 CLINICAL L. REV. 247, 249 (1998) [hereinafter Aaronson, *Practical Judgment*]).

54. Just as the different types of fundamental dimensions of law are the diverse threads in the “seamless web” of the law, *see supra* text accompanying note 27 and accompanying text, so too the various types of theoretical knowledge, practical skills, and qualities of character—the fundamental dimensions of the lawyer as it were—are the diverse threads in the “seamless web” of the lawyer. Similarly, just as the six sets of fundamental dimensions of law are systemically pervasive (so that the fundamental dimensions are dimensions of each other), and mutually interactive (so that changes in one or more dimensions can frequently produce changes in other dimensions) within the context the lawyer confronts, *see supra* note 27 and accompanying text, so too the various types of theoretical knowledge, practical skills, and qualities of character are systemically pervasive and mutually interactive within the lawyer in a similar way. *Cf.* STUCKEY ET AL., BEST PRACTICES, *see supra* note 16, at 60 (emphasizing the holistic nature of lawyer competence and stating that “[c]ompetence requires the integrative application of knowledge, skills, and values”). Moreover, this is necessarily how they develop in our students during their legal education. *See* Sammons, *supra* note 41 (discussing the holistic nature of student learning through the “case method” and observing that “[T]his teaching . . . is as much about professional identity (including the virtue of seeing good arguments on both sides . . . ) and skills as it is about knowledge—more so in fact”). There may be a parallel with Polyani’s hierarchy of levels of reality here too, with values or qualities of character being the highest and most fundamental, and hence “most real,” level. *See supra* text accompanying note 41.

55. In some situations, the practical reasoning involved when making a practically wise judgment (and calling into play relevant attributes to do so) may appear “intuitive” and instantaneous; in other situations, especially those that are complex and ambiguous, the practical reasoning involved requires careful deliberation. Although study alone may be sufficient for the acquisition of much requisite theoretical knowledge, habitual practice and experience are necessary for the cultivation of requisite practical skills and qualities of

It is the master virtue of practical wisdom that enables the lawyer to call into play the relevant attributes from the ensemble of attributes and to conduct the entire ensemble appropriately.<sup>56</sup> When a situation involves others, practical wisdom requires good ethical judgment as well.<sup>57</sup>

To be practically wise, then, the lawyer must not only acquire the theoretical knowledge and practical skills that comprise technical

---

character in the ensemble of attributes. Regarding the frequent complexity and ambiguity in situations confronting the lawyer, see, for example, STUCKEY ET AL., *BEST PRACTICES*, *supra* note 16, at 68:

Practical judgment is “the key faculty needed when lawyers seek to identify, assess, and propose concrete solutions in particular and often complex social circumstances.” In law practice it is the norm rather than the exception for lawyers to encounter situations where it is not clear what outcomes would best serve clients’ interests and where lawyers must weigh multiple and complex options to find the most appropriate means for achieving any outcome. Determining the best course of action in such situations requires the exercise of practical judgment.

*Id.* (quoting Aaronson, *Practical Judgment*, *supra* note 53, at 249) (footnotes omitted).

56. *Cf.* STUCKEY ET AL., *BEST PRACTICES*, *supra* note 16, at 68-69 (quoting Aaronson, *Thinking Like a Fox*, *supra* note 53, at 32) (“In such situations, it is the lawyer’s capacity for reflective, not determinant, judgment that is regularly tested. One’s ability to identify and apply the law is but one skill and one form of reasoning needed, and often enough not the most important. The critical attribute is not the attorney’s legal knowledge but his or her ability to bring to bear, competently and sensibly, the appropriate breadth and depth of knowledge, whether rooted in schooling or experience, that best addresses the particular matter at-hand. The high development of this capacity for reflective judgment is what accounts for good practical judgment in lawyering. It is a process of deliberation that involves the contextual synthesizing and prioritizing of a range of factors, including facts, feelings, values, and general and expert knowledge, all at once. It is what is needed intellectually to reach a cohesive and balanced conclusion when there is no straightforward method for resolving competing concerns.”).

57. For further exploration of the procedural elements comprising the master virtue of practical wisdom, see David T. Ritchie, *Being Pragmatic About Practical Wisdom*, in TOWARD HUMAN FLOURISHING, *supra* note 41 (describing five “distinct steps” of “inquiry” in the pragmatic reasoning characteristic of the competent practitioner who makes practical and wise decisions). For further exploration of the substantive elements involved, see Jack Sammons, *Guidelines for Observing Practical Wisdom at Work*, in TOWARD HUMAN FLOURISHING, *supra* note 41 (describing five “central components” of practically wise deliberation). See Barry Schwartz & Kenneth Sharpe, *The War on Wisdom and How to Fight It*, in TOWARD HUMAN FLOURISHING, *supra* note 41 (describing six “moral abilities” of the practically wise person); see also Darcia Narvaez, *Neurobiology and Virtue Cultivation*, in TOWARD HUMAN FLOURISHING, *supra* note 41; Thomas Lickona, *Developing the Ethical Thinker and Responsible Moral Agent*, in TOWARD HUMAN FLOURISHING, *supra* note 41 (describing various elements of “moral expertise”); Aaronson, *Thinking Like a Fox*, *supra* note 53, at 34-37, as discussed in STUCKEY ET AL., *BEST PRACTICES*, *supra* note 16, at 69 (describing “six key characteristics and dynamics regarding the nature of practical judgment” generally and in lawyering specifically).

expertise but must acquire certain qualities of character and become a certain type of person.<sup>58</sup> Among the qualities at the heart of the good lawyer's professional character are *possessing* practical wisdom, *valuing* practical wisdom as central to the moral ideal of professionalism, and a sense of calling to become a lawyer *with* practical wisdom. In this way, becoming a practically wise lawyer is also at the heart of the good lawyer's sense of identity and purpose.

Of course, the above account is a schematic account providing a skeletal structure to which substance must be added: What sorts of ends can be "the right thing" to aim at? What sorts of means can be "the right means"? What ensemble of attributes *does* the good lawyer need—what theoretical knowledge, what practical skills, what qualities of character? Where does the virtue of civic-mindedness fit into the overall analysis, *if* it does? And most crucially for our present inquiry, how does a serious and sustained perspectives exposure help a student discover the answers to these questions and instantiate those answers?<sup>59</sup>

## 2. Professional Attributes of the Practically Wise Lawyer

The identification and analysis of specific professional attributes of the good and practically wise lawyer helps demonstrate why a serious and sustained perspectives exposure is critical for the development of these attributes. I turn now to the primary such professional attributes.<sup>60</sup>

---

58. Technical expertise is often thought of in terms of competence. However, there is no distinction between competence and character if competence itself is understood as requiring qualities of character and the exercise of practical wisdom. See Ritchie, *supra* note 57 ("[P]ractical wisdom [is] not . . . some difficult-to-attain ideal but . . . the mark of experts operating competently within their professional domains."). For a good discussion of how to move students towards practical wisdom through a "pedagogy of engagement," see Daisy Hurst Floyd, *Pedagogy and Purpose: Teaching for Practical Wisdom*, 63 MERCER L. REV. 943 (2012) (identifying a framework comprising four elements: identity, community, responsibility, and a body of knowledge).

59. We are not without guidance on these matters. For a survey of various statements of professional attributes, see STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 50-55 (describing various statements of "desirable outcomes" of legal education, that is, "the core general characteristics and abilities that we might want new lawyers to possess"). Interestingly, and tellingly, two of these statements (by Lasso and Mudd) explicitly, and several others implicitly, include "perspective" as a desirable outcome. *Id.*

60. In addition to various accounts of the nature of practical wisdom (see the references given *supra* note 57; see also *supra* text accompanying note 56 (Aaronson quote)), I rely upon the 1992 MACCRATE REPORT, *supra* note 12, and the 1996 PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, that between them identify and analyze many of the practical skills and qualities of character the practically wise lawyer needs in the ensemble of professional attributes. Although the analytical approach in the various accounts of practical wisdom and in these two ABA Reports may appear to fragment the professional attributes of the good lawyer in a highly artificial and reductionist manner, my intent in

*a. Qualities of Character, Lawyer Professionalism, and Sense of Calling*

To begin with qualities of character<sup>61</sup> before considering practical skills and substantive knowledge,<sup>62</sup> I first consider certain general qualities of character that have been identified as central in various accounts of practical wisdom. I then examine qualities identified in two ABA reports.

**i. General Qualities of Character.** A critical quality identified in the various accounts of the nature of practical wisdom is the ability simultaneously to empathize and to retain a sufficient degree of detachment to ensure the independence that is also necessary for wise judgment. For example, Barry Schwartz and Kenneth Sharpe state that “a wise person can take the perspective of another to see the situation as *she* does, to understand how *she* feels.”<sup>63</sup> In addition, however, “a wise person knows . . . how to find the mean . . . between *empathy and detachment*, or between fairness, treating all students alike, and

---

invoking them is once again, paradoxically, precisely the opposite. It is part of the overall strategy to combat the reductionist fragmentation of law and lawyering that led to the devaluing of perspectives subject matter in the law school curriculum and to help restore a properly holistic and integrative understanding of law and lawyering by using the same kinds of analytical tools that led to a fragmented and reductionist understanding in the first place. *See supra* text accompanying note 22.

61. For a discussion of the nature of qualities of character, or “character traits,” see KRONMAN, *supra* note 45, at 74-76. Kronman explains that although some character traits may have an intellectual dimension, a character trait is essentially an “affective habit” or “a feeling one experiences, without deliberate effort, in recurrent situations of some kind.” *Id.* at 75. Such character traits determine a person’s “core identity.” *Id.* at 76. However, not all affective habits qualify as character traits:

If a disposition is too trivial, or widely shared, it is unlikely to be viewed as a constituent of personal identity and classified as a trait of character. Thus we regard courage, for example, as a trait of character because the possession or lack of it so deeply shapes our perception of who a person is, but we do not normally consider his love of brandy (a trivial habit) or fear of death (a universal one) similarly revealing.

*Id.*

62. This is consistent with the suggestion, articulated by my colleague Jack Sammons, that “a school should start thinking about its curriculum by seeking faculty agreement on what kind of lawyers it wants its students to be. I do not mean what they, the students, should be able to do, although that is part of it, but what they should be.” Sammons, *supra* note 1, at 245.

63. Schwartz & Sharpe, *supra* note 57 (identifying six “moral abilities possessed by a wise person or a mensch,” that is, the ability to attend to the particular circumstances, to find the mean, to improvise, to empathize, to aim at the right things, and to draw on experience, take initiative, and learn from mistakes).

giving this unique individual what she deserves.”<sup>64</sup> As Schwartz and Sharpe explain:

To be empathetic is to be able to feel what the other person is feeling. But empathy is more than just a feeling. In order to be able to feel what another person is feeling, you need to be able to see the world as that other person sees it. This ability to take the perspective of another demands perception and imagination. Empathy thus reflects the integration of thinking and feeling. . . .

Development of genuine empathetic understanding is not automatic. It depends on experience. But we seem to be predisposed to profit from the experience if we have it. . . .

There is, as yet, no final and complete story about how empathy develops in children. But what *is* known about the importance of the right kind of experience in nurturing empathy in children provides important lessons if we are interested in nurturing empathy in adults. Adults, too, need the right kind of experience, and disciplined rule-following doesn't provide it.<sup>65</sup>

It seems that, in addition to personal experience of one's own, the necessary experiences for the development of practical wisdom also “can be derived from the experience of others, fictional or historical, if the experience is adequately internalized.”<sup>66</sup> In his insightful enumeration

---

64. *Id.* (emphasis added).

65. BARRY SCHWARTZ & KENNETH SHARPE, PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING 71-72 (2010). For further discussion, see *id.* at 69-80 (also discussing the concept of emotional intelligence). See also Sammons, *supra* note 57. In his analysis of the second of five components of practically wise deliberation (the deliberation involves means and ends, is driven by the actual particularities of context, relies heavily upon internalized past experiences, is sufficiently aware of itself to consider and correct for its limitations, and considers the character and not just the consequences of the action to be taken), Sammons explains that:

“Deliberation driven by the *actual particularities* of a particular context” requires strong abilities of perception, good listening, empathy with others (for the purposes of understanding) combined with the detachment honesty requires, moral and factual imagination, determinations of relevance, and determinations of importance including an insistence upon the relevance and importance of the emotions to deliberation, and so forth.

*Id.*

66. *Id.* Sammons explains further that:

“Deliberation that relies heavily upon *internalized past experiences*” requires, in part, having intuitions that can be applied to the task at hand and, in other part, an acquired practical knowledge about humanity, *e.g.*, how people are likely to react to various events tempered with an acute awareness of the human potential for unpredictability. Internalized experiences are often personal ones, but they can be derived from the experience of others, fictional or historical, if the experience is adequately internalized. So, for example, there is practical wisdom in the

of the general qualities of professional character needed by the practically wise lawyer, Jack Sammons specifies various qualities encompassed by the general quality of empathy combined with detachment, as well as several that fall outside it:

[T]he ability to recognize what is shared in competing positions; an attentiveness to detail, especially linguistic detail; an attentiveness as well to the ambiguities of language; a use of these ambiguities both for structuring the conversation and analyzing the issue; a focus on text and a markedly different sense of its restraint; a rhetorical awareness of the reactions of potential audiences to each competing position and even to each argument; an imaginative anticipation of future disputes; a realistic assessment of the situation even as a partisan in it; a recognition of the persuasive elements of all positions, especially those in opposition to the lawyer's own; a very particular form of honesty; an insistence on practicality combined with an acceptance of complexity; a shying away from broad principles and "proud words"; a concern with the procedures by which decisions are to be made; an equal concern with the quality of the roundtable conversation itself including a concern that all voices round the table be well heard and considered; an evaluation of positions in terms of an objective hypothetical authoritative decision-maker who serves as stand-in for social judgment, and, thus, a consideration of each proposed course of action from a particular social perspective.<sup>67</sup>

---

common law which can become personal for those who relive the experience of common law through the narrative it provides. There is practical wisdom in history for those for whom the same is true. In fact, the way in which one internalizes the experiences of others is primarily through experiencing them as narratives.

*Id.* (footnote omitted).

67. See Sammons, *supra* note 1, at 246 n.28 (quoting Jack L. Sammons, *The Georgia Crawl*, 53 MERCER L. REV. 985, 985-86 (2002)). Sammons further notes that "[these] are observable characteristics of the person—of what he or she has become—rather than of performances of particular tasks—of what he or she can do." *Id.* In specifying these qualities Sammons is addressing "those virtues carried by the practice by which we identify good lawyering when we see it." *Id.* He hypothesizes a community group (comprising a priest, an accountant, a business executive, a psychologist, an engineer, a philosopher, a physician, a city planner, an architect, and a lawyer) dealing with a difficult and complex problem facing the community, and considers that another lawyer could readily identify the lawyer in the group "even if the conversation had not afforded the lawyer the opportunity to display his or her knowledge of legal matters." *Id.* (quoting Jack L. Sammons, *The Georgia Crawl*, 53 MERCER L. REV. 985, 985 (2002)). While conceding that "[m]any other practices may shape its practitioners toward many of these same habits of thought, and surely this is all a matter of degree," Sammons maintains that "these habits of thought, these virtues of the practice of law, if you will, considered collectively can be seen as defining a unique character for lawyers as an ideal." *Id.* (quoting Jack L. Sammons, *The Georgia Crawl*, 53 MERCER L. REV. 985, 986 (2002)).

In his most recent work, Sammons seems to be suggesting that the most fundamentally necessary qualities of character—those upon which all others depend for optimal efficacy (and upon which preservation of the law itself depends)—include faith in the “mystery” of the law or the legal situation, which means faith in the mystery of our own being in the way of the law, and a certain humility before this mystery that will allow us to listen for what the law or the legal situation is saying.<sup>68</sup>

**ii. Lawyer Professionalism and Sense of Calling.** As a character ideal,<sup>69</sup> lawyer professionalism surely includes the general qualities of character discussed above. However, it includes more, and that additional meaning is my focus now.<sup>70</sup>

In its 1996 Report, the ABA Professionalism Committee notes a perceived decline in lawyer professionalism since the 1980s.<sup>71</sup> Building upon Roscoe Pound’s understanding of the essence of a profession as “pursuing a learned art as a common calling in the spirit of public service,” the Committee defines a professional lawyer as “an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging in these pursuits as part of a common calling to promote justice and public good.”<sup>72</sup> Elaborating upon this definition, the

---

68. See Jack L. Sammons, *Listening to Law* (manuscript for presentation at Pepperdine Law School in Feb. 2012) (on file with author).

69. Professionalism in any profession is a moral or ethical ideal that is related to the moral formation and character development of the professional practitioner. See generally TOWARD HUMAN FLOURISHING, *supra* note 41.

70. Here the discussion reflects the distinctive vocabulary developed by the language of lawyer professionalism.

71. PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 2-3. The Committee identifies six prevalent themes articulated in the relevant literature relating to this perceived decline in lawyer professionalism: (1) concerns about lawyer competence and lawyer ethics; (2) various negative consequences resulting from the growing commercialization of law practice (such as reduction of time available for public service activities and growing dissatisfaction regarding incompatibility with personal values and goals); (3) perceived excesses of the adversarial system, including loss of civility; (4) an undermining of the lawyer’s role as independent counselor; (5) the loss of a sense of the ultimate purpose of lawyers as related to serving the public good by mediating between conflicting interests in society; and (6) the loss of a sense of law practice as a “calling.” See *id.* at 3-4 (identifying these themes in a different order from the order presented here).

72. *Id.* at 5-6 (quoting ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953)) (emphasis omitted). Interestingly and tellingly, the Committee appears to endorse the professional ideal of the lawyer-statesman, with its related twin character virtues of practical wisdom and civic-mindedness; see *id.* at 5-9 & n.21, 31; see also *supra* text accompanying notes 44-45, 50 and *infra* notes 134, 264 and accompanying text (discussing the lawyer-statesman ideal, including Anthony Kronman’s specific account of that ideal, which the Committee also appears to endorse).

Committee identifies six “essential characteristics” of the professional lawyer and twelve “supportive elements.”<sup>73</sup> The six “essential characteristics” are: (1) Learned knowledge; (2) Skill in applying the applicable law to the factual context; (3) Thoroughness of preparation; (4) Practical and prudential wisdom; (5) Ethical conduct and integrity; and (6) Dedication to justice and the public good.<sup>74</sup> The twelve “supportive elements” are: (1) Formal training and licensing; (2) Maintenance of competence; (3) Zealous and diligent representation of clients’ interests within the bounds of law; (4) Appropriate deportment and civility; (5) Economic temperance; (6) Subordination of personal interests and viewpoints to the interests of clients and the public good; (7) Autonomy; (8) Self-regulation; (9) Membership in one or more professional organizations; (10) Cost-effective legal services; (11) Capacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system; and (12) A client-centered approach to the lawyer-client relationship which stresses trust, compassion, respect, and empowerment of the client.<sup>75</sup> The Committee explains the link between these essential characteristics and supportive elements and the concept of professionalism as follows: “[P]rofessional lawyers practice professionalism, by which we mean they *embrace* the characteristics or traits of the professional lawyer as we have defined that concept.”<sup>76</sup>

In identifying these various qualities of character, the Professionalism Committee built upon the 1992 MacCrate Commission Report.<sup>77</sup> The MacCrate Report identifies four “Fundamental Values of the Profession” to which the lawyer should be committed: (1) Provision of competent representation; (2) Striving to promote justice, fairness, and morality; (3) Striving to improve the profession; and (4) Professional self-development.<sup>78</sup>

---

73. See PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 6-7.

74. *Id.* (citing MACCRATE REPORT, *supra* note 12, at 140-41, 207-21 (punctuation added and quotation marks omitted for readability)).

75. *Id.* at 7 (citing MACCRATE REPORT, *supra* note 12, at 140-41, 207-21 (punctuation added and quotation marks omitted for readability)).

76. *Id.* (emphasis added). Moreover, in the Committee’s view the ideal it articulates in its definition of lawyer professionalism is relevant for *all* lawyers, regardless of their practice setting. *Id.* at 6 n.21.

77. MACCRATE REPORT, *supra* note 12.

78. *Id.* at 140-41 (format adapted and quotation marks omitted for readability). The MacCrate Report analyzes each of these four Values, breaking it down into its constituent elements. *Id.* at 207-21. The Professionalism Committee considers that its six essential characteristics and twelve supportive elements are also incorporated in the MacCrate Report’s formulation of these four fundamental values. See PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 7 n.23.

Although the text focuses on two ABA generated reports, there are of course other illuminating and instructive accounts of needed values or qualities of character that

*b. Practical Skills*

The MacCrate Report is also helpful in identifying many of the practical skills that are part of the ensemble of attributes needed by the practically wise lawyer. It specifies ten “Fundamental Lawyering Skills”: (1) Problem solving; (2) Legal analysis and reasoning; (3) Legal research; (4) Factual investigation; (5) Communication; (6) Counseling; (7) Negotiation; (8) Skills necessary for litigation and alternative dispute procedures; (9) Administrative skills necessary for the organization and management of legal work; and (10) Skills involved in recognizing and resolving ethical dilemmas.<sup>79</sup>

---

partially overlap and partially complement those in these two ABA reports. *See, e.g.*, STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 79-91 (discussing various accounts, and emphasizing and explicating five professional values in particular: a commitment to justice; respect for the rule of law; honor, integrity, fair play, truthfulness, and candor; sensitivity and effectiveness with diverse clients and colleagues (implicating the skill of cross-cultural competence); and nurturing quality of life). My colleague Pat Longan has developed an analytical framework centered on five values of professionalism, which he uses to help structure his required first year Legal Profession course—competence, fidelity to the client, public service, fidelity to the law and the legal system, and civility. He also considers that practical wisdom is needed in drawing upon these values in particular circumstances. Clearly, the specific qualities of character identified by the Professionalism Committee Report and the MacCrate Report, as well as those in other accounts, could also be grouped and organized in terms of this framework. For further discussion of this pioneering and ABA award-winning course, see *infra* notes 116-24 and accompanying text.

79. MACCRATE REPORT, *supra* note 12, at 138-40 (format adapted and quotation marks omitted for readability). As in the case of the four fundamental values, the Report analyzes each of these lawyering skills, breaking it down into its constituent elements. *Id.* at 141-207. The MacCrate Report does not intend its identification and elaboration of skills and values to be regarded as exhaustive. *See id.* at 132 (drawing a distinction between the skills and values, identified in the Report, that are necessary for “ensuring practice at a minimum level of competency” and the development of other skills and values that may be necessary for excellence). On the other hand, the Committee does not consider that all lawyers need to be familiar with all the skills and values it identifies. *Id.* at 125 (discussing the situation of lawyers who work as part of a team, and new members of the profession working under the supervision of a more experienced attorney).

We noted above other illuminating and instructive accounts of needed values or qualities of character that partially overlap and partially complement those in the Professionalism Committee Report and the MacCrate Report. *See supra* text accompanying note 78. Similarly, there are other illuminating and instructive accounts of needed skills that partially overlap and partially complement the account of skills in the MacCrate Report. *See, e.g.*, STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 65-73, 77-79 (discussing self-reflection and lifelong learning skills, as well as various intellectual and analytical skills, and also presenting various listings of “professional skills”).

*c. Substantive Knowledge*

The MacCrate Report explicitly recognized the importance of substantive knowledge as a necessary complement to the skills and values it treats as fundamental. The Report made no attempt, however, to prescribe “what aspects of substantive law should be included in a course of preparation for all new members of the profession” because, in its drafters’ view, such a project is “sufficiently distinct from an analysis of skills and values” that they “should not attempt to address both.”<sup>80</sup> The Report therefore was silent on the importance of including perspectives subject matter in the curriculum.<sup>81</sup>

## II. MERCER LAW SCHOOL’S WOODRUFF CURRICULUM

Something like the above vision of the practically wise lawyer has animated Mercer Law School’s Woodruff Curriculum ever since its adoption in 1989.<sup>82</sup> At its inception the Woodruff Curriculum was ahead of its time in anticipating much that is included in the MacCrate Report<sup>83</sup> and the Professionalism Committee Report of the 1990s<sup>84</sup> and

---

80. MACCRATE REPORT, *supra* note 12, at 125. The Report also recognizes the relationships and interdependence among the different skills and among the different values as well as between the skills and values. *See id.* at 136-37. This recognition, together with the Report’s recognition of the importance of substantive knowledge as a necessary complement to the skills and values, gestures towards the holistic nature of legal practice. *See supra* notes 54-56, 60 and accompanying text.

81. As we will see *infra* notes 236, 244 the Professionalism Committee was *not* silent on this matter.

82. This does not mean, of course, that each member of the faculty who voted to adopt the various curricular reforms included in the proposal made by the Woodruff Committee (often as significantly amended), or even each member of the Woodruff Committee itself, would necessarily subscribe to the above account and its invocation of the MacCrate Report and the Professionalism Committee Report without qualification. To have such an expectation, particularly for members of a law school faculty, would be unrealistic, if not utopian. For the views of one member of the Woodruff Committee, for example, see Sammons, *supra* note 1, at 243-44, 247 (expressing various types of reservations with regard to the MacCrate Report).

83. *See, e.g.*, Richard W. Creswell, *Mercer University: “Narrowing the Gap in the Law School Curriculum,”* 26 GA. STATE B.J. 165 (1990). The author, who was a member of the Woodruff Committee, observes with respect to the MacCrate Report that “the Mercer faculty dealt with many of the same issues outlined for attention by the ABA Task Force” and describes “several features of Mercer’s new curriculum that respond directly to the concerns prompting the creation of the ABA Task Force.” *Id.*

84. The MacCrate Report acknowledged and analyzed the dramatic increase in the number of law school courses and programs providing skills and values instruction that had occurred since World War II; however, it also identified several remaining deficiencies in this respect. *See* MACCRATE REPORT, *supra* note 12, at 6, 236-59. In light of these

even the Carnegie Report on Legal Education and the Study on Best Practices for Legal Education, both published in 2007.<sup>85</sup> Furthermore, in the years since its adoption, the Woodruff Curriculum has evolved in a number of ways that evidence an intent on the part of the Mercer Law faculty to bring the curriculum more closely into line with various recommendations made in the later reports.<sup>86</sup> This can be seen most clearly, perhaps, in the evolution of the professionalism component of the curriculum.

*A. Professional Formation: Becoming A Good and Practically Wise Lawyer*

After its adoption in 1989, the Woodruff Curriculum was rightly regarded as a highly innovative and path-breaking approach to legal education.<sup>87</sup> In an article published in 1992, Lewis Solomon singled out

---

deficiencies, the Report made twenty-five specific recommendations aimed at enhancing skills and values instruction in law school curricula and otherwise enhancing professional development during the law school years. *See id.* at 259-60, 330-34. However, the Report envisaged that law schools needed flexibility in determining how best to do so in light of their particular situation. *Id.* at 259-60.

Similarly, the Professionalism Committee Report acknowledged the existing efforts of law schools in the area of legal ethics and professionalism instruction, but also noted the remaining deficiencies in this respect. *See* PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 13-16, 39-59 app. B. And once again, the Report included a set of recommendations for enhancing law school legal ethics and professionalism training. *See id.* at 16-25. Once again, too, the Report recognized the need for law schools to retain flexibility in determining how best to do so in light of their particular situation. *Id.* at 16.

Both the MacCrate Report and the Professionalism Committee Report considered that law schools and the practicing bar share responsibility for ensuring the proper professional development of members of the legal profession, which they discharge in the manner appropriate to their particular missions during an educational continuum that begins before law school, includes the years at law school, and extends throughout a lawyer's career; and both Reports, therefore, also included recommendations for the periods before and after law school. *See* MACCRATE REPORT, *supra* note 12, at 3-8, 328-30, 334-37; PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 2, 11-13, 25-34.

85. SULLIVAN ET AL., EDUCATING LAWYERS, *supra* note 15; STUCKEY ET AL., BEST PRACTICES, *supra* note 16. While using somewhat different terminologies, both works essentially call for the balanced integration in the law school curriculum of substantive knowledge, practical skills, and qualities of character and both emphasize the importance of developing the capacity of students to exercise good professional practical judgment.

86. Of course, there is also much in these sources, especially the two most recent ones in 2007, that it would behoove Mercer, like other law schools, to consider in an ongoing evaluation of its curriculum.

87. *See* Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment*, 24 U. TOL. L. REV. 1 (1992) (examining several different types of curricular reforms adopted by various "pioneering" law schools during the previous five years).

Mercer as one of two notable examples of law schools that had recently implemented “holistic curricular reforms designed to promote the competency of their graduates.”<sup>88</sup> Solomon explained that the faculties of both law schools “took an overall look at their programs and sought to integrate skills, theory and professional responsibility into a traditional doctrinal base” and discussed how both schools “provide more diversity in their teaching methods and skills as well as more structure, thereby overcoming the typical lack of progression in course offerings.”<sup>89</sup>

The Woodruff Curriculum is discussed in detail in Solomon’s article<sup>90</sup> as well as in articles by Dick Creswell and Jack Sammons, two members of the Committee that drafted the original Woodruff proposal.<sup>91</sup> The discussion in this section will draw on the analyses in those articles.

### 1. *Basic Approach in Designing the Woodruff Curriculum*

Jack Sammons describes the basic point of departure in designing the Woodruff Curriculum: “[A] school should start thinking about its curriculum by seeking faculty agreement on what kind of lawyers it wants its students to be. I do not mean what they, the students, should be able to do, although that is part of it, but what they should be.”<sup>92</sup> In Sammons’s terminology, this vision of our graduates and of the ultimate goal of a legal education is a “traditionalist” vision:

Traditionalists assume that *thinking like a lawyer* is the central constitutive component of the practice. It is central in the same way that practical wisdom is central to all Aristotelian virtues because the ideas are the same. Thinking like a lawyer, as the practical wisdom of our practice—although traditionalists have seldom expressed it this way—is both the practice’s primary internal good and its primary product. It is not a skill and it cannot be well learned by teaching its parts, nor can it be well measured by its products. It is much more a matter of what a good student of the law will become in the process of study than of what that student can do at the end. It requires nothing less than a transformation of the person, an acquisition of a manner, bearing, and style of thought for life.<sup>93</sup>

---

88. *Id.* at 1. Solomon identifies the University of Montana School of Law as the other example. *Id.*

89. *Id.* at 27.

90. *See id.* at 27-30.

91. Creswell, *supra* note 83; Sammons, *supra* note 1.

92. Sammons, *supra* note 1, at 245; *see also supra* text accompanying note 62.

93. Sammons, *supra* note 1, at 238 (footnote omitted). Here Sammons is describing traditionalist assumptions regarding “the central constitutive component of the practice. . . .” *Id.* For Sammons’s discussion of the traditionalist assumptions regarding

This contrasts with another possible vision of our graduates and of the ultimate goal of a legal education, which Sammons would describe as a “technician” vision:

For technicians, however, the central constitutive component of the practice of law is the acquisition and proficient utilization of certain techniques in the performance of identifiable lawyering tasks. Practice can be learned by teaching its parts and it can be measured by its products. Learning the practice of law for technicians is more a matter of what the good student can do at the end of law study than of what he or she will become in the process.<sup>94</sup>

Sammons considers that both approaches encounter various problems in their pure form in contemporary circumstances.<sup>95</sup> He concedes that “neither of the dominant schools of thought can provide a unified conception of the practice and of learning that is adequate for making sense of curricula decisions or teaching strategies.”<sup>96</sup> In his view, the solution is to “fuse these competing schools of thought into a single and satisfying conception that does not unduly offend either school of thought,”<sup>97</sup> and this, according to Sammons, is precisely what Mercer

---

“legal pedagogy, and the legal apprentice’s relationship to the practice,” see *id.* at 237-39.

94. *Id.* at 239 (footnote omitted). Here Sammons is describing technician assumptions regarding “the central constitutive component of the practice . . .” *Id.* at 239. For Sammons’s discussion of technician assumptions regarding “legal pedagogy, and the legal apprentice’s relationship to the practice,” see *id.* at 237-40.

95. For discussion of these problems, see *id.* at 242-43. Sammons summarizes the problems as follows:

The traditionalists’ problems are created by their reliance upon a central virtue that has become too abstracted from the practice. Traditionalist assumptions offer an Aristotelian way of determining what good lawyering could be, but these assumptions provide no coherent methodology for either confirming or producing it. The problems with technician assumptions are exactly the opposite. Their assumptions offer a methodology for confirming and producing good lawyering, but no way for determining what good lawyering might be. Obviously these problems are very closely related. In the simplest terms, we could say that one school knows where it is going and why, but not how to get there, while the other knows how to get there, but not where it is going or why.

*Id.* This failure is at the heart of Sammons’s critique of the MacCrate Report, *supra* note 12. See Sammons, *supra* note 1, at 243-44 (critiquing the MacCrate Report as offering a technician-oriented, externally-derived “re-creation of the practice” rather than a description of good practice internally derived from the moral authority of the practice itself).

96. *Id.* at 245.

97. *Id.*

sought to do in designing the Woodruff Curriculum.<sup>98</sup> Thus, the Mercer faculty started with a traditionalist vision of the virtues of the “good lawyer” and combined that vision with the technicians’ methodology.<sup>99</sup> More specifically, we began by agreeing on the goal of preparing our students “for the general practice of law.”<sup>100</sup> As Sammons explains, “it is only in preparation for the general practice of law that students can begin acquiring the unique set of virtues that distinguishes the law as a profession.”<sup>101</sup> We then worked backwards from this traditionalist goal of “[what we] wanted [our] students to be and to be able to do in their final semester” in order to “design a structured progression” toward this end using technicians’ means.<sup>102</sup> This was not an overly programmatic and intensely analytical process requiring us to “catalogue the type of thinking requisite to thinking like a lawyer—the knowledge, skills, and the attitudes—and assign these to courses.”<sup>103</sup> Instead, “[we sought] a structure in which a general progression toward the craft of the general practitioner could happen for all students.”<sup>104</sup>

The expression “general practice of law” in the above formulation of the ultimate goal could lead one to conclude that such a goal becomes increasingly irrelevant the more that legal practice becomes increasingly specialized. If the expression is understood, however, as referring to the knowledge, skills, and qualities of character required for “the practice of law in general”—those attributes that are required, then, to be a good lawyer *whatever one’s area of practice might turn out to be*<sup>105</sup>—such a conclusion would not be warranted. And the Woodruff Curriculum has always rested as much, if indeed not more, on this latter understanding as it has on the former.<sup>106</sup>

---

98. *See id.* at 245-48 (describing how a law school might go about doing the hard work of bringing about the necessary “conversion to technical-traditionalists, or traditional-technicians, who are willing to examine the virtues of the traditionalists’ good lawyer together with the technicians’ methodology” when designing a curriculum and concluding that “[w]hat I have been describing is the process Mercer Law School went through in designing its Woodruff Curriculum”).

99. *Id.* at 245.

100. *Id.*

101. *Id.* For Sammons’s own account of what those virtues might be, see *supra* note 67 and accompanying text.

102. *Id.* at 246-47.

103. *Id.* at 247.

104. *Id.*

105. Something, moreover, that often may change over the course of a career.

106. Thus, from the beginning, the goal has been articulated in more generic terms. *See* Creswell, *supra* note 83, at 165-66 (explaining that the faculty’s “primary goal was a curriculum that progressed logically towards the practice of law,” and that “[s]ince the logical progression was towards practice, that meant that there should be a logical

## 2. *Distinctive Features of the Woodruff Curriculum*

The distinctiveness and novelty of the Woodruff Curriculum lay in the inclusion of certain innovative courses as well as in the logical progression in the students' learning experience as they proceeded through their three years at Mercer. Although I will not examine the original Woodruff Curriculum in detail here,<sup>107</sup> it is useful to review several distinctive features that the Woodruff Committee and the faculty considered essential in order to prepare our students adequately for the practice of law.<sup>108</sup> To ensure that all of our students would receive the benefit of these essential distinctive features, and thus become the distinctive Mercer lawyers we envisioned, we required them to take relevant courses.<sup>109</sup>

First, we placed a special emphasis upon the extensive development of a variety of lawyering skills. Second, we placed particular emphasis upon the skill of legal writing. Third, we created and required a novel first year course devoted to developing skills of statutory interpretation and analysis. Fourth, we chose to make extensive use of simulations

---

progression in the knowledge, skill, and attitudinal learning that preparation for practice required"); *see also id.* at 165 ("[I]t is safe to observe that Mercer has taken steps to ensure that its future graduates will be better prepared to undertake the diverse responsibilities of modern law practice than at any other time in the Law School's 117-year history.").

107. For a detailed description of the content of the Woodruff Curriculum, *see id.* at 166-68; Solomon, *supra* note 87, at 28-30.

108. These distinctive features reflect seven goals or aspirations the faculty adopted to guide the Woodruff Committee throughout the curriculum review process:

[A] concentration on the skills of case analysis, through common-law vehicles, during a significant part of the first year; semesterization of first-year courses to yield benefits in the form of additional offerings, including seminars; after the preliminary grounding in case analysis, a progression of skills and content embracing essential features of the American legal system, such as the study of basic techniques (e.g., statutory interpretation) and institutions (e.g., administrative agencies); faculty supervised writing experiences in each year of law study; practical skills courses, including but not limited to, the replacement of courses lost through the closing of the clinic; a more thorough introduction to the concepts and practices of legal professionalism; and a required exposure to one or more courses that would place the American legal system in perspective.

Solomon, *supra* note 87, at 28 n.127 (citing REPORT OF THE WOODRUFF CURRICULUM COMMITTEE TO THE FACULTY OF MERCER UNIVERSITY SCHOOL OF LAW 2 (1989)).

109. The extensive requirements necessary to ensure that all students received the benefit of these essential distinctive features did not preclude a significant degree of freedom of choice over the course of the entire three years. *See* Creswell, *supra* note 83, at 167 ("Required courses decrease, and electives increase, as the student moves through the middle three semesters" and "[t]wo-thirds of the courses taken in the middle semesters . . . are electives.").

instead of live-client clinics in order to ensure that all students, not just a relatively select few, received the desired skills training.

Fifth, we designed the curriculum to ensure a structured progression in skills training throughout the three years. This involved a “horizontal” progression for three particular skills. The first year would begin with a one-week introductory course in legal analysis and synthesis, the second year with one in counseling, and the third with one in dispute resolution. The curriculum for the rest of the year would include a “pervasive” emphasis on the skill featured in the introductory course. There was also a “vertical” progression throughout the three years. Training in a particular skill would build on the foundation provided by earlier training in that skill or other skills. We also required students to take an Advanced Skills course during their sixth and final semester,<sup>110</sup> commonly taught by experienced practitioners.

Sixth, to promote the development of lawyer professionalism values and a sense of calling, we required a sixth semester Perspectives on Lawyering course team-taught by full time faculty and experienced practitioners, and we enhanced the opportunities for close faculty-student interaction by reducing significantly the size of the student body.<sup>111</sup> Seventh, by several means, including requiring that students take an Advanced Skills course and the Perspectives on Lawyering course in the sixth semester, we made a conscious effort to provide a “bridge to practice” in that semester.<sup>112</sup>

---

110. Creswell explains this feature as follows: “The Advanced Skills courses provide advanced training in particular lawyering tasks already familiar to students (such as Negotiation, Pretrial Practice, or Advanced Litigation Drafting), or apply general lawyering skills to a particular lawyering context (such as Advising Small Business, Tax Research, or Advanced Criminal Trial Techniques).” *Id.* at 166. It should perhaps be noted that the original plan was to recruit full-time faculty to teach the Advanced Skills courses as part of an effort to have the curriculum help shape the faculty into a faculty better suited for it.

111. This reduction in class size, in turn, was made possible by a substantial gift by George W. Woodruff. See Solomon, *supra* note 87, at 27 n.124 (discussing the gift), 28 (discussing the reduction in class size and resulting benefits).

112. The extensive use of experienced practitioners as adjunct faculty to teach many of the Advanced Skills courses and the involvement of experienced practitioners in the Perspectives on Lawyering course reinforced the “bridge to practice” character of the sixth semester. Another distinctive feature of the sixth semester was a seminar requirement that was intended to provide a kind of “capstone” writing requirement as well as a final opportunity for rigorous academic reflection. It should be noted that, as originally conceived, the “bridge to practice” in the sixth semester comprised the final ten weeks after the February Bar exam. Following the abolition in 1996 of the option to take the Bar exam in February and the resulting curricular adjustments, the entire sixth semester could be conceived as a “bridge to practice.”

Eighth, we designed the curriculum to provide a structured progression not only in the development of lawyering skills but also in the mastery of substantive subject matter.<sup>113</sup> Ninth, we included three “Block requirements” to ensure that all our students would receive an education in three types of subject matter we considered essential for legal practice. Thus we required them to take at least three courses from a General Practice Block; at least one course from an Administrative Block; and at least one course from a Perspectives Block made up of courses that “afford students the opportunity to place lawyering and our legal system in their broader contexts to deepen understanding and better enable Mercer graduates to be constructive participants in the continuing evolution of our profession and our legal system.”<sup>114</sup>

### 3. *Evolution of the Woodruff Curriculum Prior to the 2011 Reforms*

Between 1989, when they first adopted the Woodruff Curriculum, and 2011, when they made the most significant revisions to date of that curriculum, the faculty made several noteworthy revisions. First, we relaxed some of the rigidity in the curricular requirements and in the structured progression of substantive subject matter and skills in order to increase student choice. This included eliminating the General Block requirement in 1999 out of a recognition that fewer students were going on to a career in general practice.<sup>115</sup>

Second, responding to a growing national perception of a decline in lawyer professionalism and increasing reports of lawyers’ dissatisfaction with the practice of law,<sup>116</sup> from 2004 we have required all first-year

---

113. For a sophisticated discussion of the many types of progressions in the Woodruff Curriculum, see Sammons, *supra* note 1, at 248-49 (identifying progressions in lawyering functions, the materials of law study, lawyering tasks, substantive areas, the systems studied, cross-cutting skills and good judgment, cross-cutting themes, and faculty relations with students).

114. Creswell, *supra* note 83, at 167.

115. We also eliminated the requirement that students take the course in Basic Income Tax, and we “loosened up” the structured progressions—for example, by permitting students to satisfy the seminar requirement in the fifth semester, not only in the sixth, and by permitting students in the sixth semester to take fourth semester courses with the relevant faculty member’s agreement (necessitated by the need to meet a separate early grading deadline for third year students driven by the timing of graduation). The 2011 curriculum reforms have relaxed remaining rigidities in the curricular requirements and structured progressions even further.

116. See PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 2-5 (discussing relevant themes and perspectives); see also *supra* text accompanying note 71 (discussing six prevalent themes the Committee identified in the relevant literature). For additional discussion of many of these themes, including an entire chapter devoted to the issue of lawyer dissatisfaction, and references to relevant literature, see CARL HORN III,

students to take a highly innovative Legal Profession course.<sup>117</sup> The course, which has evolved over the years, continues to be taught by its creator Pat Longan with some involvement by other full-time faculty and experienced practitioners and judges.<sup>118</sup> This ABA-award winning course<sup>119</sup> seeks to provide students with a firm foundation in the meaning of professionalism<sup>120</sup> and an appreciation of how a commitment to the values of professionalism can provide a sense of calling and purpose and the core of a professional identity. It also tries to give students a realistic understanding of the challenges they will face in living up to these values in practice.<sup>121</sup> The first-year Legal Profession

---

LAWYERLIFE: FINDING A LIFE AND A HIGHER CALLING IN THE PRACTICE OF LAW 1-74 (2003).

117. In order to accommodate this new course in the first year curriculum, the course in Statutory Law and Analysis was moved into the third semester (that course was also reduced from three hours to one hour and then back up to two hours).

118. For a description of this course in 2009, see Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659 (2009). For a shorter description of the course in its current form after significant restructuring, see Patrick Longan & Timothy Floyd, *Mercer Law School's Focus on Professionalism*, 2 BLOOMBERG LAW REPORTS—STUDENT EDITION, no. 1, Jan. 31, 2011, at 12 (also describing the Law School's Public Interest Practicum Program).

119. For his work on the course, Pat Longan received the 2005 National Award for Innovation and Excellence in Teaching Professionalism from the ABA Standing Committee on Professionalism, the National Conference of Chief Justices, and the Burge Endowment for Legal Ethics. Longan, *supra* note 118, at 659 footer note.

120. The course uses a framework for thinking about professionalism that identifies five central values: competence, fidelity to the client, public service, fidelity to the law and the legal system, and civility. As discussed above, *supra* text accompanying note 78, the specific qualities of character identified by the Professionalism Committee Report and the MacCrate Report, as well as those in various other accounts, could also be grouped and organized in terms of this five values framework.

121. Longan and Floyd describe the three central goals of the course as follows:

The required first-year Legal Profession course has three goals. The first is to instruct students on what professionalism means for lawyers and why it matters whether or not lawyers fulfill these expectations. Students learn about how these values are challenged in practice so that they can develop sensitivity to professionalism issues.

A second goal is for students to begin to form a professional identity and a commitment to living up to the values of the profession. Part of this process is for the students to learn how important it is for clients, the system of justice, and for the public generally that lawyers live up to these virtues. Another part is for the students to begin to understand that much of their own happiness as lawyers will be tied to their adherence to the values of professionalism.

The third goal is to develop skills that will help students take appropriate action when confronted with conflicting values. Students hone their skills of reflection, self-awareness, reasoning and judgment so that they can better respond to conditions of inherent conflict and uncertainty.

course replaces the third-year Perspectives on Lawyering course.<sup>122</sup> By getting students to think about professionalism issues in their first year, the course provides important grounding and context for the students' courses throughout their three years,<sup>123</sup> including for the Public Interest Practicum Program introduced in 2006.<sup>124</sup> Thus it facilitates yet another logical progression in the curriculum.

### *B. Evaluation of the Woodruff Curriculum*

There is considerable correspondence between the goals of the Woodruff Curriculum and the good and practically wise lawyer described in Part I.C. The Woodruff Curriculum has deliberately sought to develop the various professional attributes of the good and practically wise lawyer—the general qualities of character<sup>125</sup> and the specific characteristics of lawyer professionalism and sense of professional calling,<sup>126</sup> the necessary lawyering skills,<sup>127</sup> and the necessary theoretical or substan-

---

Longan & Floyd, *supra* note 118, at 12. As the authors observe, at Mercer “[w]e have explicitly placed character development and the formation of professional identity at the core of our curriculum.” *Id.*

122. Like the Perspectives on Lawyering course it replaced, it serves as the main complement to the traditional Law of Lawyering course focused on the rules of professional responsibility.

123. The exploration of professionalism issues in other courses contributes to the goal of teaching legal ethics and professionalism by the pervasive method as advocated by the ABA Professionalism Committee. See PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 18-23 (explaining that “[t]he goal of a successful pervasive method need not be that ethical and professionalism issues be covered in every law school course” but that “every law student is exposed to ethical and professionalism issues in a systematic fashion during each year of the J.D. program,” and making several suggestions for teaching legal ethics and professionalism by the pervasive method).

124. For a description of the Public Interest Practicum program, see Longan & Floyd, *supra* note 118, at 13-14.

125. *Supra* notes 63-68 and accompanying text. Thus, Jack Sammons offers his depiction of those qualities, *supra* note 67 and accompanying text, as a vision of “the make up of the good lawyer” that can “inform our teaching and curricula design” in general. Sammons, *supra* note 1, at 246 n.28. And he suggests specifically that this is the “traditionalist” vision that informed the design of, and to a considerable extent has been achieved by, the Woodruff Curriculum in particular. *Id.* at 248 (“What I have been describing is the process Mercer Law School went through in designing its Woodruff Curriculum.”).

126. *Supra* notes 69-78 and accompanying text. This is especially apparent in the Legal Profession course. Even before this course was created, the ABA recognized Mercer’s commitment to developing its students’ professionalism by awarding the Woodruff Curriculum the E. Smythe Gambrell Professionalism Award in 1996.

127. *Supra* note 79 and accompanying text. This is especially apparent in the skills training contemplated by the Woodruff Curriculum. With regard to the special emphasis on legal writing, Mercer has been ranked either first or second in the *U.S. News & World*

tive knowledge.<sup>128</sup> As will be shown in Part III, the Woodruff Curriculum's Perspectives Block requirement has made a unique and important contribution in helping to develop these attributes.

Turning to the six sets of fundamental dimensions of law described in Part I.A and the historical development of the mainstream law school curriculum discussed in Part I.B, the Woodruff Curriculum's attention to the substantive dimensions of law has much in common with the mainstream law school curriculum.<sup>129</sup> However, it has placed a greater emphasis than the mainstream curriculum upon the following: the structural dimensions of law (by requiring all students to take Statutory Law and Analysis and at least one course from the Administrative Block);<sup>130</sup> the practical dimensions of law (by requiring all students to take several lawyering skills courses and the course in Legal Profession);<sup>131</sup> and the social or cultural or transnational dimensions of law (by requiring that all students take at least one course from the Perspectives Block).<sup>132</sup>

Perhaps the Woodruff Curriculum erred in not requiring a serious and sustained exposure to the social *and* the cultural *and* the transnational dimensions of law in specifically dedicated courses. In addition, it was perhaps wrong not to require a sufficiently broad exposure *within* each of these sets of fundamental dimensions in the courses that are offered.<sup>133</sup> Yet, these possible deficiencies notwithstanding, the Woodruff Curriculum has represented a major improvement over the mainstream law school curriculum. It has gone a long way towards

---

*Report* specialty ranking for Legal Writing since creation of that ranking in 2006. See *Legal Writing*, U.S. NEWS & WORLD REPORT, <http://gradschools.usnews.rankingsandreviews.com/best-graduate-school/top-law-schools/legal-writing-rankings> (last visited Mar. 3, 2012).

128. *Supra* notes 80-81 and accompanying text.

129. For discussion of the substantive dimensions of law, see *supra* note 31 and accompanying text.

130. For discussion of the structural dimensions of law, see *supra* note 32 and accompanying text.

131. For discussion of the practical dimensions of law, see *supra* note 33 and accompanying text. Before creation of the Legal Profession course, this greater emphasis was also reflected in the Perspectives on Lawyering course that the Legal Profession course replaced.

132. For discussion of the social, cultural, and transnational dimensions of law, see *supra* notes 34-37 and accompanying text.

133. *Cf.* Solomon, *supra* note 87, at 30 (after noting its "significant advantages," Solomon observes that "[Mercer's] program has its weaknesses. Although a block of perspectives offerings are provided, the program appears deficient in the areas of theory and policy. The question is one of balance. How much theory is relevant in a program designed to train students for the general practice of law?"). For further discussion of this point, see *infra* notes 255-61 and accompanying text.

reintegrating all six sets of fundamental dimensions of law in a holistic program of legal education aimed at formation of the “complete lawyer.” In so doing, it has honored the better traditions of U.S. legal education established during the first phase in its historical development.

The vision of the Mercer lawyer animating the design of the Woodruff Curriculum bears a striking resemblance to the ideal of the good and practically wise lawyer. Preparing students to become liberally educated lawyer-statesmen and stateswomen who possess practical wisdom and civic-mindedness and who will serve their clients and the Republic by acting in a properly broad-minded way is precisely what the Woodruff Curriculum has sought to do since its inception. The priceless value of achieving this goal can so easily be missed by law schools during their anxious and frenetic scramble to rise in the U.S. News rankings. It can, perhaps, only be captured in poetic imagery such as that used by Anthony Kronman, a modern-day champion of the historic lawyer-statesman ideal: “[T]hose who see the ideal and seize the opportunity to realize it in their own work will win for themselves a prize of infinite value, like the sailor in a storm who manages, somehow, to save himself and his ship’s most precious cargo.”<sup>134</sup>

### III. FORMING BROAD-MINDED LAWYERS—PERSPECTIVES COURSES IN THE LAW SCHOOL CURRICULUM

It is just as imperative for legal educators today, as it was during the first phase in the history of U.S. legal education, to help students become lawyers possessing both practical wisdom and civic-mindedness. And in pursuing this goal, it is just as imperative for legal educators today, as it was during the first phase, to ensure that law students receive a serious and sustained perspectives exposure to the social, cultural, and transnational dimensions of law and lawyering.

---

134. KRONMAN, *supra* note 45, at 381. After carefully considering institutional pressures within the legal academy, law firms, and the courts, and the associated rise of competing and less compelling professional ideals within each, Kronman concludes that “there is reason to believe that a small-town or small-city practice may provide a more congenial setting” than other practice settings for those who wish to find the professional identity and achieve the professional fulfillment that will come from living out the lawyer-statesman ideal; and he strongly implies that it is those law schools, such as Mercer, whose students will mostly enter small-town or small-city practice, that are best positioned to cultivate the lawyer-statesman ideal in their students. *Id.* at 368-81. For Kronman’s detailed analysis of the pertinent institutional pressures and associated rise of competing ideals, see *id.* at 165-270 (law schools), 271-314 (law firms), 315-52 (courts). *See also id.* at 17-52 and 353-68 (for further elaboration of some of the competing ideals).

*A. Perspectives Subject Matter and Perspectives Courses in Professional Formation: Developing Technical Expertise and Qualities of Character*

We have already noted that restricting the term “perspectives” to the type of subject matter and courses that address the social, cultural, and transnational dimensions of law—courses such as law and economics, legal history, jurisprudence, law, ethics and morality, comparative law, international law, and so on—risks confirming the “neo-Langdellian prejudice” that they are not concerned with “real law” but with something external to real law.<sup>135</sup> It suggests, for many, that such subject matter and such courses must be a waste of time and of no importance to the practice of law. Nothing could be further from the truth, however. They have very much to do with something internal, inside the law, and they are of great utility in the practice of law.<sup>136</sup>

At the heart of the “perspectives” experience is comparison. It may consist, for example, of comparing our current legal experience with the legal experience of those who lived in the past or with the legal experience of those who live in other parts of the world or inhabit other types of legal orders. Alternatively, it may involve comparing jurisprudential ideas about law with each other or with our own dominant jurisprudential paradigm, or comparing the law, the legal system, and legal behavior with forms of social ordering such as morality, religion, politics, and economics.<sup>137</sup> Such comparison enables the student to see

---

135. See *supra* note 40 and accompanying text.

136. See *supra* note 41 and accompanying text. Referring to such subject matter and courses as being concerned with “law in context” or “lawyering in context” runs a similar risk: the perception that such subject matter and such courses do not concern “real law,” just “context.” It also invites a similar solution, namely to realize that just as everything is *internal* perspective, so also of course everything is *internal* context. See *supra* notes 25, 38 and accompanying text (explaining that each set and subset of fundamental dimensions—indeed each dimension—adds a level of context, reality, and meaning and enables the other dimensions and any legal situation to be seen in broader perspective). Referring to such subject matter and courses as being concerned with the “broader dimensions of law” or the “broader dimensions of lawyering” makes the “internal” nature of such subject matter and such courses clearer. However, such terminology may be somewhat inelegant.

137. It is this dimension of comparison that justifies characterizing courses addressing various transnational dimensions of law as perspectives courses, at least when such comparison is explicitly or implicitly central to the course. Thus, a course in International Law would normally qualify, whereas a course in Immigration Law, for example, normally would not. The former is primarily concerned with a radically different legal order from that of the U.S. legal system; the latter is primarily concerned with a sub-specialty of U.S. administrative law within that system. Where the aspect of comparison is more prominent, however, as it certainly could be in an Immigration Law course that invites in-depth

(or begin to see) the world of law and lawyering in all its vast richness and diversity. It encourages a more holistic understanding of law and lawyering and resists a trade school mentality that would reduce law and lawyering to a matter of mechanical technique.<sup>138</sup>

Perspectives subject matter and courses are important in the professional formation of the good lawyer because they address important aspects of the holistic and multidimensional professional context in which the various legal situations confronting the lawyer occur.<sup>139</sup> They enable the lawyer to understand the context better, to develop and draw upon the professional attributes necessary to engage in good practical reasoning about ends and about means, and to respond to the context appropriately.<sup>140</sup> A serious and sustained perspectives exposure results in the acquisition and organization of detailed knowledge in various knowledge domains.<sup>141</sup> When appropriate, the

---

exploration of different cultures, such a course could justifiably be regarded as a perspectives course as that term is used here. The same is true of other courses addressing transnational dimensions, such as a course in International Business Transactions. A typical course in European Union Law is a hybrid in this respect because it inherently has both the feature of law governing international business transactions and the dimension of comparative legal ordering.

138. Of course, in a sense, the perspectives experience is not unique in involving comparison. Comparison is central to analogical reasoning, and analogical reasoning is central to all practical reasoning, in the law and elsewhere, and indeed to reasoning in general, and thus, in this sense, to all knowledge domains. *See, e.g.*, HAROLD J. BERMAN ET AL., *THE NATURE AND FUNCTIONS OF LAW* 366, 369 (5th ed., 1996).

The most pervasive form of legal logic is that of analogy, in the broad sense of the comparison and contrast of similar and dissimilar examples. . . . Analogical reasoning is, of course, a universal mode of reasoning and by no means unique to law. What is distinctive about law, in this respect, is the degree of emphasis placed upon the use of analogy and the development of special legal rules, procedures, and methods for drawing analogies.

*Id.* The authors distinguish their broader use of the term “analogy” from the narrower, more technical use of the term, “signifying the extension of a legal category to a situation which is ‘similar to,’ but not ‘the same as’ those situations which the category ‘logically’ includes.” *Id.* at 366. What is unique about the perspectives experience, then, are the *additional* types of comparison involved.

139. For a discussion of that holistic and multidimensional context, see Part I.A above.

140. For a discussion of those professional attributes, see Part I.C above.

141. *See* Jones, *Theoretical Framework*, *supra* note 2, at 612-17 (discussing how detailed knowledge is organized in various knowledge structures in the mind—schemas, scripts, cognitive maps, and paradigms—that are integrated with each other and with other knowledge structures). It is important to note that, because the good lawyer has become a particular kind of person, the lawyer will usually “adapt” or “refract” or “inflect” or “modulate” the knowledge gained in the perspectives exposure into a profession-specific form within the practice of the profession, and the knowledge structures in the mind will of course reflect this. Thus, when influenced by knowledge of economics or moral philosophy, for example, the lawyer is “thinking like a lawyer,” not simply as an economist

good lawyer can then draw upon this organized knowledge to respond to the context of the particular legal situation in an effective and efficient manner. A serious and sustained perspectives exposure not only shapes what the lawyer knows; it also shapes what the lawyer does and who the lawyer is.<sup>142</sup>

*1. Technical Expertise—Utilizing the “Sources of Law” in Decision-Making*

Perspectives courses are of critical practical value in helping to develop students’ technical expertise and thus prepare them for the competent practice of law. Such courses explore important sources in the “seamless web of the law.” To make persuasive arguments, students need to acquire knowledge of these sources and skill in handling them.

*a. Sources of Law as Causal Factors in Producing Legal Outcomes*

The six sets of fundamental dimensions of law represent different types of “sources of law,”<sup>143</sup> meaning that they represent different kinds of human influences<sup>144</sup> that operate as causal factors in producing legal outcomes.<sup>145</sup> The ultimate outcome in any given legal situation is the result of a series of decisions made by relevant legal actors. The lawyer’s goal in this process is to produce an ultimate legal outcome that responds appropriately to the particular context of the client.<sup>146</sup>

---

or a philosopher.

142. In the ensuing discussion, it is important to remember that the lawyer’s substantive knowledge, practical skills, and qualities of character are seamlessly integrated, systemically pervasive, and mutually interactive professional attributes. *See supra* note 54 and accompanying text. Thus, in practice, the lawyer’s technical expertise and the lawyer’s character are necessarily interdependent.

143. *See supra* note 20 and accompanying text.

144. The restriction of the fundamental dimensions taxonomy to human influences explains why there is no set of fundamental dimensions dealing with the physical or material dimensions of law, such as geography or climate, even though such factors can have a significant impact upon a legal system.

145. That aspect of an exploration of the social dimensions of law which examines the behavioral or social effects of law concerns “sources of law” in the sense of law-related sources that are a source or cause of such effects as opposed to other types of sources/causes of those effects.

146. For a more extensive analysis of how the multiplicity of causal factors or “sources” related to the six sets of fundamental dimensions of law may directly or indirectly influence legal outcomes, see Jones, *Theoretical Framework*, *supra* note 2, at 597-601. The good lawyer must be able to identify, process, and frequently manipulate this multiplicity of causal factors when making, evaluating, and influencing the various decisions that produce the ultimate legal outcome.

The comparison at the heart of the perspectives experience<sup>147</sup> may take one of two forms when informing the lawyer's practical reasoning during this process. First, the lawyer can compare domestic law-related norms and reasoning *with the norms and reasoning* of the various knowledge domains related to the social, cultural, and transnational dimensions of law. In certain cases this type of comparison results in, or occurs in the process of, directly applying the norms and reasoning of another knowledge domain (international law or foreign law or historical law, for example). Second, the lawyer can compare and evaluate the *consequences of decisions in terms of the norms and reasoning* of several of these knowledge domains. In this instance, the lawyer may compare and evaluate the consequences of *alternative* decisions in terms of the norms and reasoning of a specific knowledge domain (economics or psychology, for example), or the lawyer may compare and evaluate the consequences of *a particular* decision in terms of the norms and reasoning of different knowledge domains (economics and morality, for example).<sup>148</sup> The lawyer will use the insights gained to make decisions and to evaluate and influence decisions made by other legal actors in a manner appropriate to the context. Depending on the particular situation and the lawyer's particular function and role, these other legal actors may include judges, juries, legislators, administrative officials, other parties, other lawyers, and the client.

*b. Litigation and Judicial Decision-Making*

In litigation, the competent lawyer must be able to understand and evaluate the law and make arguments that will persuade the court to render a decision favorable to the lawyer's client. This requires the lawyer to address those "sources of law" that may operate as causal factors in producing the court's decision. H.L.A. Hart proposes a tripartite taxonomy that provides one way to think about the "sources of law" or causal factors that explain a court's decision. In his classic book *The Concept of Law*, Hart distinguishes among three kinds of sources of law, giving examples of each:

---

147. *Supra* note 137 and accompanying text.

148. Sometimes the first type of comparison will also incorporate the second type of comparison as an element (for example, when an evaluation of the applicability of foreign law requires consideration of the consequences of legal rules in the domestic and/or foreign legal system through proper use of the comparative method). Regarding the comparison of economics and morality, I recognize that moral premises are implicit, and sometimes explicit, in law and economics analysis. However, law and economics analysis has achieved such extensive influence that it is commonly regarded as an independent knowledge domain or "school of thought" separate from morality (or, alternatively, from the rest of morality).

(1) Mandatory or binding legal sources (“formal” sources), which are “the criteria of legal validity accepted in the legal system in question” (for example, enactment by a legislature, customary practice, or precedent); (2) Permissive or persuasive legal sources, which provide “good reasons” for decision “[w]here [a judge] considers that no statute or other formal source of law determines the case before him” (for example, a text of the Digest, or the writings of a French jurist); and (3) Historical or material sources, which are “the causal or historical influences which account for the existence of a given rule of law at a given time or place” (for example, rules of Roman law or Canon law or rules of popular morality).<sup>149</sup>

Clearly, the competent lawyer must be able to identify, process, and manipulate the sources or “causal factors” in the first category in order to be able to make persuasive arguments and influence the reasoning of the court. Though perhaps not obvious, the first category of sources includes international and foreign law. International law is a directly binding source of law in the U.S. legal system to the extent that common law rules and constitutional provisions mandate its application.<sup>150</sup> Foreign law is binding in U.S. courts to the extent that a court’s choice-of-law methodology calls for the application of foreign law; moreover, foreign law must be consulted whenever a binding source of U.S. law expressly refers to or implicates foreign law.<sup>151</sup> International law and foreign law are sources of law that originate in very different and unfamiliar types of legal order—types requiring distinctive kinds of knowledge and specialized skills.

Hart’s two examples of sources in the second category demonstrate the value of a familiarity with legal history (a text of the Digest) and comparative law (the writings of a French jurist).<sup>152</sup> In an essay

---

149. H.L.A. HART, *THE CONCEPT OF LAW* 246-47 (1961).

150. For a good, concise discussion of the complex issues involved in the “incorporation” of international law into U.S. domestic law, see DAVID J. BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS* (3d ed. 2010), at 163-66 (customary international law), 171-79 (international treaties). *See also id.* at 161-63 (relationship to constitutional law norms).

151. *See, e.g.*, MATTEI ET AL., *supra* note 25, at 53-56 (examining the “myriad and often complex ways [in which] the U.S. legal system interacts with the legal systems of other countries” and explaining that “[o]ne of the tasks of comparative law is to promote comprehension and proper application of this important part of U.S. law”).

152. The Digest is part of the *Corpus Juris Civilis*, the great “codification” of Roman Law promulgated by the Byzantine Emperor Justinian in four parts (the Institutes, the Digest, the *Codex*, and the *Novellae*) in the fourth decade of the sixth century. It is a compilation of excerpts from various writings of thirty-nine Roman jurists, mostly from the period between 100 C.E. and 250 C.E., and especially from the writings of Ulpian and Paul. Following its rediscovery in the medieval West at the end of the eleventh century, it was intensively studied by generations of scholars and lies at the foundation of the Western

published elsewhere, Hart elaborates on this category of sources and provides other examples of relevant sources:

It is of crucial importance that cases for decision do not arise in a vacuum but in the course of the operation of a working body of rules, an operation in which a multiplicity of diverse considerations are continuously recognized as good reasons for a decision. These include a wide variety of individual and social interests, social and political aims, and standards of morality and justice; and they may be formulated in general terms as principles, policies and standards. In some cases only one such consideration may be relevant, and it may determine decision as unambiguously as a determinate legal rule. But in many cases this is not so, and judges marshal in support of their decisions a plurality of such considerations which they regard as jointly sufficient to support their decision, although each separately would not be. Frequently these considerations conflict, and courts are forced to balance or weigh them and to determine priorities among them.<sup>153</sup>

---

legal tradition. For further discussion of the creation of the *Corpus Juris* and of the influence of the Digest in Western legal history, see, for example, BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW 38-54 (1962).

153. H. L. A. HART, ESSAYS IN JURISPRUDENCE AND PHILOSOPHY 107 (1983). For further discussion of the role of specifically moral argument in judicial reasoning and decision-making and the character of the judicial audience that is the object of the lawyer's attempts to persuade, see HART, *supra* note 149, at 200:

Laws require interpretation if they are to be applied in concrete cases, and . . . it is patent . . . that the open texture of law leaves a vast field for a creative activity which some call legislative. Neither in interpreting statutes nor precedents are judges confined to the alternatives of blind, arbitrary choice, or "mechanical" deduction from rules with predetermined meaning. Very often their choice is guided by an assumption that the purpose of the rules which they are interpreting is a reasonable one, so that the rules are not intended to work injustice or offend settled moral principles. Judicial decision, especially on matters of high constitutional import, often involves a choice between moral values, and not merely the application of some single outstanding moral principle; for it is folly to believe that where the meaning of the law is in doubt, morality always has a clear answer to offer. At this point judges may again make a choice which is neither arbitrary nor mechanical; and here often display characteristic judicial virtues, the special appropriateness of which to legal decision explains why some feel reluctant to call such judicial activity "legislative." These virtues are: impartiality and neutrality in surveying the alternatives; consideration for the interest of all who will be affected; and a concern to deploy some acceptable general principle as a reasoned basis for decision. No doubt because a plurality of such principles is always possible it cannot be *demonstrated* that a decision is uniquely correct: but it may be made acceptable as the reasoned product of informed impartial choice. In all this we have the "weighing" and "balancing" characteristic of the effort to do justice between competing interests.

*Id.*

Hart's examples relate to different sources of law that represent different knowledge domains, and each demands a distinctive type of knowledge and specialized skills.<sup>154</sup>

As mere "causal or historical influences" accounting for the existence of a given rule, sources in the third category—historical or material sources—are of no rhetorical value to the lawyer. However, sources in this third category may well have originated in the second category. Consider, for example, the persuasive normative force of popular morality or economic policy. The competent lawyer will know when and how to manipulate this third category of sources when making or addressing arguments related to the second category of sources and reopening questions perhaps considered long settled. In effect, the lawyer seeks to move these sources back into the second category for possible reconsideration. This is a further demonstration, of course, of the value of a familiarity with legal history.

The preceding discussion demonstrates the value of perspectives subject matter and courses for understanding legal doctrine in greater depth and for developing and using five of the skills identified by the MacCrate Report—legal reasoning,<sup>155</sup> legal research,<sup>156</sup> factual investi-

---

154. In addition to historical law and foreign law, therefore, good reasons persuading a court may be found in jurisprudential analysis, or moral reasoning, or policy considerations relating to economics or other societal interests. In addition, the formulation and impact of such reasons may also be dependent upon the lawyer's understanding and manipulation of relevant psychological factors. Regarding the utility of a familiarity with major jurisprudential schools and movements when crafting certain types of legal argument, see, e.g., LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* 221-41 (2003).

155. MACCRATE REPORT, *supra* note 12, at 151-55 (Skill 2: Legal Analysis and Reasoning). The Report analyses this Skill as involving the identification and formulation of legal issues, the formulation of relevant legal theories, the elaboration of legal theory, the evaluation of legal theory, and criticizing and synthesizing legal argumentation. *Id.* These tasks are invariably performed under the influence of one or more jurisprudential paradigms. Regarding other types of "perspectives," see *id.* at 153 (Skill 2.3: Elaborating Legal Theory, which also entails "skills and concepts involved in elaborating and enhancing legal theories," including identifying and analyzing "arguments in different dimensions (such as, for example, doctrine, history, practicality, justice and equity), that can be brought to bear to support (or oppose) the legal theories that have been formulated"), 154-56 (Skill 2.5: Criticizing and Synthesizing Legal Argumentation, which also entails "skills and concepts involved in . . . [c]ritically examining the legal 'rules' on which the theories and arguments are based, putting these rules into perspective in the light of their purposes, derivations, the circumstances under which they were announced, and so forth . . . [and] [a]n evaluation of potential flaws in reasoning, including . . . [q]uestionable applications of inductive or deductive logic"). See also *id.* at 213-15 (internal quotation marks omitted) (Value 2: Striving to Promote Justice, Fairness, and Morality, which also entails "[c]ontributing to the [p]rofession's [f]ulfillment of its [r]esponsibility to [e]nhance the [c]apacity of [l]aw and [l]egal [i]nstitutions to [d]o [j]ustice," including through

gation,<sup>157</sup> communication,<sup>158</sup> and litigation.<sup>159</sup> The use of international and foreign law in constitutional cases before the United States Supreme Court offers a striking example of the potential value of becoming familiar with the knowledge domains represented by these various types of sources of law. In particular, the majority opinion in *Roper v. Simmons*<sup>160</sup> unwittingly demonstrates the pitfalls of proceeding without a proper familiarity with international and comparative law. In this case a five-member majority of the United States Supreme Court affirmed the judgment of the Missouri Supreme Court setting aside the death sentence of a defendant who was under eighteen at the time the relevant offence was committed.<sup>161</sup> After discussing several international conventions prohibiting the execution of juveniles, as well as

---

endeavoring to change legal rules that are not “just, understandable, and responsive to the needs of society”).

156. *Id.* at 159 (Skill 3: Legal Research, which also entails familiarity with “[t]echniques of reading and analyzing court decisions”).

157. *Id.* at 167 (Skill 4: Factual Investigation, which also entails “[a]n understanding of the basic communication processes and interpersonal dynamics involved in interviewing” and application of that understanding in ascertaining and responding appropriately to a “witness’s motivations” as well as “atten[ding] to, and correctly interpreting, verbal and nonverbal communications” when conducting interviews), 172 (Commentary to Skill 4, explaining that, in addition to interviewing of fact witnesses and analysis of documents, “[o]ther forms of investigation may call upon the lawyer to employ other skills and perhaps also other substantive knowledge. For example, lawyers often have to gather facts about technological or scientific matters. . . .”); *see also id.* at 208, 210, 219 (identifying the acquisition of substantive knowledge regarding relevant fields and disciplines other than law as part of Value 1: Provision of Competent Representation and Value 4: Professional Self-Development).

158. *Id.* at 173-75 (Skill 5: Communication, which also requires an awareness of how “[a]n insufficient understanding of the other person’s culture, personal values, or attitudes” can impede the ability to view relevant matters from the perspective of the recipient of the communication (for example, client, decisionmaker(s), opposing counsel, witnesses, and so forth), attending to relevant “emotional or interpersonal factors,” and “effectively tailoring the nature, form, or content of the written or oral communication to suit . . . [t]he [particular] audience. . . .”).

159. *Id.* at 192-93, 195 (Skill 8: Litigation and Alternative Dispute Resolution Procedures, which also entails the skills and processes involved in the formulation, evaluation, and critique of legal theories at the trial court level and the skills and techniques required for effective brief writing, including the factors and processes to consider in making arguments, at the appellate level); *see also id.* at 194 (evaluating “[t]he extent to which a jury may be swayed by emotional factors prejudicial to the client”), 197 (noting, with regard to alternative dispute resolution, the importance of familiarity with “[t]he sources of norms that govern or guide decisionmaking in the various mechanisms (for example, substantive legal doctrines, industry conventions, equitable considerations”).

160. 543 U.S. 551 (2005).

161. *Id.* at 578-79.

individual countries' foreign law or public declarations, the Court concluded as follows:

It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. . . . The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.<sup>162</sup>

Writing in dissent, Justice O'Connor conceded that "[v]ery few, if any, countries other than the United States now permit this practice in law or in fact" and that "the international community has reached clear agreement—expressed in international law or in the domestic laws of individual countries—that [this] particular form of punishment is inconsistent with fundamental human rights."<sup>163</sup> She also allowed for the possibility that "the existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus."<sup>164</sup> She dissented, however, because, in her view, there was "no such domestic consensus."<sup>165</sup>

The case is a striking example of the potential value of the second category of "sources of law" for lawyers seeking to persuade a court to rule in the client's favor.<sup>166</sup> It is also a striking example of how not to do this well. Thus, Justice Scalia's dissenting opinion exposes the majority's and Justice O'Connor's lack of sophistication in handling international and foreign sources.<sup>167</sup> He cogently argues that *if* one is

---

162. *Id.* at 578. The Court concluded that in light of "the evolving standards of decency that mark the progress of a maturing society" as manifested in state legislation and state practice in the United States, as well as salient differences between adults and juveniles under eighteen, imposition of the death penalty on juvenile offenders is disproportionate punishment that violates the Eighth Amendment prohibition against cruel and unusual punishment. *Id.* at 560-75 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)).

163. *Id.* at 604-05 (O'Connor, J., dissenting).

164. *Id.* at 605.

165. *Id.*

166. The case does not illustrate the role of the first category of sources because the United States had either not ratified, or it had entered relevant reservations to, the international conventions in question, and thus the rules in those conventions could not apply directly as a binding source of law for the Court.

167. *Id.* at 622-28 (Scalia, J., dissenting) (Chief Justice Rehnquist and Justice Thomas joined in Justice Scalia's dissent). Justice Scalia's greater sophistication in this respect is ironic, because his originalist theory of constitutional interpretation precludes him from *ever* considering international and foreign law as a "source of law" in the second category of sources in constitutional cases (except, of course, for "old English law" as he has wryly explained). *See, e.g.*, U.S. Ass'n of Constitutional Law, American University Washington College of Law, *Constitutional Relevance of Foreign Court Decisions*, C-SPAN (Jan. 13,

going to regard foreign law as a persuasive “good reason,” one should at least look beyond the black letter law or black letter statements by foreign governments.<sup>168</sup> A comparison of foreign to domestic legal materials is only meaningful if the foreign materials are handled in the same multi-contextual manner as domestic materials need to be handled.

To be sure the majority nods in this direction with its observation that international opinion against the death penalty “rest[s] in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime.”<sup>169</sup> Justice Scalia rightly emphasizes, however, the importance of undertaking a more extensive exploration of context for a proper understanding and a proper comparison. He maintains, for example, that the Court should have inquired whether countries that have prohibited the death penalty for juveniles have a *mandatory* death penalty for certain crimes,<sup>170</sup> whether countries that have abolished the death penalty on paper have *actually done so in practice*, and whether there are distinctive American values justifying a distinctively American answer to the question of the legitimacy of sentencing juveniles to death.<sup>171</sup> By any measure, the majority’s use of international and foreign law was naively superficial and unlawyerly.<sup>172</sup>

---

2005), <http://www.c-spanvideo.org/program/185122-1> (colloquy between Justice Breyer and Justice Scalia), at 33-35 minutes.

168. *Roper*, 543 U.S. at 622-28 (Scalia, J., dissenting).

169. *Id.* at 578 (majority opinion); *see also supra* note 162 and accompanying text. This represents an explicit nod in the direction of the social dimensions of law and perhaps an implicit nod in the direction of the jurisprudential dimensions as well.

170. In contrast to the United States in which a jury may decide not to impose the death penalty.

171. *Roper*, 543 U.S. at 622-28 (Scalia, J., dissenting). Thus, in making these three points, he calls for a further inquiry into, respectively, the substantive and structural dimensions, the socio-legal world or “law in action” within the social dimensions, and the social, historical, and jurisprudential dimensions.

172. Justice Scalia contends that the Court is not engaged in “reasoned decision-making, but sophistry” because, as he sees it, the Court is willing “[t]o invoke alien law when it agrees with one’s own thinking, and ignore it otherwise” (as demonstrated, for example, by the Court’s apparent unwillingness to let “the views of foreigners” influence its jurisprudence on such matters as the interpretation of the establishment clause in the context of public education, abortion on demand before viability, the exclusionary rule, the prohibition on double jeopardy, and the scope of the right to jury trial in criminal cases, even though United States law on these matters is significantly aberrational). *Id.* at 624-27.

Arguably, the actual result would have been no different in the end, even using Justice Scalia’s improved comparative methodology. For example, perhaps the majority could have found a “Western consensus” against the death penalty for juveniles (there being no issue regarding possible differences between the stated position and actual practice with regard

*b. Decision-Making in Other Contexts*

Hart's tripartite taxonomy of "sources of law" is helpful in thinking about decision-making in other contexts as well. For example, with regard to legislative law reform efforts, Hart's first category of sources is represented by relevant norms of constitutional law and other sources that bind the legislature and act as constraints on its discretion.<sup>173</sup> Within these constraints, the legislature has much more freedom to act with respect to existing statutory or common law norms than does a court. Accordingly, there is even more scope for the competent lawyer to manipulate the types of sources in Hart's second category of sources when making arguments and providing "good reasons" aimed at persuading the legislature rather than a court.<sup>174</sup> As in the case of judicial decision-making, the competent lawyer will also know when and how to manipulate the "causal or historical influences" in the third category of sources that account for the existing law.<sup>175</sup>

As the competent lawyer seeks to influence decision-making in the legislature (or rulemaking in administrative agencies), the value of perspectives subject matter and courses for developing and using the MacCrate Report's skills of legal research, factual investigation, and communication should be apparent.<sup>176</sup> The authors of a leading

---

to Western nations) and, after examining the social and cultural contexts of the United States and other Western nations, might have concluded that there were no relevant differences in these contexts justifying American exceptionalism *on this particular issue*. Even so, the example the majority sets by using an inferior methodology is not a good one.

173. These other sources include international law and, at the state level, federal law as well.

174. Once again, those reasons may be based on historical or jurisprudential analysis, non-binding international or foreign law, moral reasoning, or policy considerations relating to economics or other societal interests, and again may involve any relevant psychological factors.

175. The process of administrative rulemaking can be similarly analyzed, except that the first category of legal sources now includes the governing statute and binding case-law.

176. MACCRATE REPORT, *supra* note 12, at 157-58 (Skill 3: Legal Research, stating that the lawyer requires an understanding of the variety of legal remedies available in the particular situation, including "legislative remedies (such as drafting and/or lobbying for new legislation; lobbying to defeat pending legislative bills; and lobbying for the repeal or amendment of existing legislation); administrative remedies (such as presenting testimony in support of, or lobbying for, the adoption, repeal, or amendment of administrative regulations; and lobbying of an administrator to resolve an individual case in a particular way"); *see also id.* at 213, 215 (Value 3: Striving to Promote Justice, Fairness, and Morality, which also includes "[c]ontributing to the [p]rofession's [f]ulfillment of its [r]esponsibility to [e]nhance the [c]apacity of [l]aw and [l]egal [i]nstitutions to [d]o [j]ustice," including through legislative reform and other reform efforts). Regarding the skills of factual investigation and communication, *see supra* notes 157-58 and accompanying text

comparative law casebook rightly observe that it is puzzling why “law reforming agencies throughout the United States so often fail to avail themselves of the advantages of the comparative method. A list of missed opportunities of this kind would be boringly long if it were compiled.”<sup>177</sup> As one comparativist wrote almost a century ago:

When one is immersed in his own law, in his own country, unable to see things from without, he has a psychologically unavoidable tendency to consider as natural, as necessary, as given by God, things which are simply due to historical accident or temporary social situation. . . . To see things in their true light, we must see them from a certain distance, as strangers, which is impossible when we study . . . phenomena of our own country. That is why comparative law should be one of the necessary elements in the training of all those who are to shape the law for societies. . . .<sup>178</sup>

If the insight behind this powerful statement is properly understood, the statement logically applies to *all* perspectives subject matter and courses, not just comparative law. All of them enable those engaged in the various aspects of the legal process “[t]o see things in their true light.”<sup>179</sup>

The preceding discussion applies analogously to decision-making involved in applying or reforming other types of public or quasi-public normative orderings as well. Consider, for example, the norms of professional responsibility<sup>180</sup> or the norms governing legal educa-

---

respectively. The targets of lobbying efforts may be bodies within the legislature (legislative committees and commissions, for example) or those informing the legislative process from outside the legislature (industry or consumer lobbying groups, for example).

177. MATTEI ET AL., *supra* note 25, at 145-52 (discussing the use of comparative studies by the New York Law Revision Commission and contrasting the provincialism of most other law reform efforts in the United States). Of course, as the authors illustrate in their discussion, proper use of the comparative method to inform legislative law reform requires sufficient attention to possible differences in context, just as it does in judicial decision-making. *Id.*; see also *id.* at 242-44 (discussing the routine use of comparative studies to inform legislative law reform in continental Europe and Great Britain and indeed most other common law countries, and recognizing that in the United States “examination of the laws of fifty-three American jurisdictions imposes a heavy load on the legislative draftsman even without the study of foreign materials” but also noting that “there is some indication that comparative studies have become more frequent than they once were as a prelude to law reform”).

178. Pierre Lepaulle, *The Function of Comparative Law*, 35 HARV. L. REV. 838, 858 (1922), as quoted in MATTEI ET AL., *supra* note 25, at 242 n.34.

179. *Id.*

180. See, e.g., MODEL RULES OF PROF'L CONDUCT (2010), available at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).

tion.<sup>181</sup> Such norms are analogous to the first category of sources in Hart's tripartite taxonomy. As with Hart's second category of sources, good reasons for making decisions or persuading other relevant decisionmakers in applying or reforming these norms may be derived from perspectives subject matter. For example, moral reasoning is valuable in applying indeterminate rules of professional conduct,<sup>182</sup> and comparative studies have proven valuable in suggesting possible reforms in legal education.<sup>183</sup> As with Hart's third category of sources,

---

181. These norms are part of the "structural dimensions of law" within the fundamental dimensions of law taxonomy. They include "external" nationally applicable substantive and procedural norms, such as the ABA Standards governing the operation of accredited law schools. See Am. Bar Ass'n, *2011-12 Standards and Rules of Procedure for Approval of Law Schools* (2011), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_standards\\_and\\_rules\\_for\\_web.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_standards_and_rules_for_web.authcheckdam.pdf). They also include the "internal" substantive and procedural norms governing the detailed structure and content of the education provided by a particular law school within that externally derived framework. The norms governing legal education are mentioned in connection with the present discussion on the preparation of competent lawyers because the practicing Bar is, and should be, part of the conversation regarding the appropriate structure and content of legal education, as is demonstrated by the role of the ABA in accrediting law schools, past ABA studies, such as the MacCrate Report and Professionalism Committee Report, and ongoing discussions within the ABA and between the ABA and the AALS regarding accreditation standards. Consequently, it seems legitimate to regard the attempts of the practicing Bar to influence decision-making regarding legal education as also requiring and implicating lawyer competence, not just the competence of legal educators.

182. See MACCRATE REPORT, *supra* note 12, at 204-05 (Skill 10: Recognizing and Resolving Ethical Dilemmas, which also entails being familiar with "[a]spects of ethical philosophy bearing upon the propriety of particular practices or conduct (such as, for example, general ethical precepts calling for honesty, integrity, courtesy and respect for others; general ethical prohibitions against lying and misrepresentation)" and bringing the lawyer's personal sense of morality and capacity for self-scrutiny to bear in questioning, researching, and seeking guidance regarding various practices).

183. See, e.g., STUCKEY ET AL., *BEST PRACTICES*, *supra* note 16 (drawing extensively upon the approaches to legal education in other countries, especially the training of solicitors in England and Wales, in its analyses and recommendations). For example, the authors address a feature of U.S. legal education that commonly strikes lawyers trained in other countries as bizarre to say the least. Noting that only Vermont and Delaware require some period of practice experience before lawyers are fully licensed, the authors call for more states to follow the lead of these two states, observing that "We believe the public would be better served by a process that begins sooner, lasts longer, and includes a mandatory period of supervised practice before full admission to the legal profession, perhaps adapted from the best traditions of British Commonwealth jurisdictions." *Id.* at 12-13; see also *id.* at 149-57 (elaborating upon the value of a period of supervised practice, such as that required of an English solicitor or barrister before full licensure, in cultivating the lawyer's practical wisdom). As a lawyer trained as a barrister in England, and subject to the usual caveats regarding the importance of being alert to relevant differences in context, it is difficult for me to disagree with the authors' contentions regarding the value

the competent lawyer will also know when and how to manipulate the “causal or historical influences” that account for the existence of the norms.

The discussion also has a bearing on decision-making involved in counseling clients or in representing them in dispute resolution negotiations or transactional negotiations.<sup>184</sup> There is an analogy to Hart’s first category of sources of law in the norms of private ordering that may govern the situation,<sup>185</sup> and as with Hart’s second category of sources, good reasons for making decisions or persuading other relevant decision makers in creating, applying, or reforming these norms may be derived from perspectives subject matter. Among other things, economics, business practice, moral reasoning, game theory, or psychology may come into play. As with Hart’s third category of sources, the competent lawyer will also know when and how to manipulate the “causal or historical influences” that account for the existing norms of private ordering. Once again, we see the value of perspectives subject matter and courses for developing and using various skills identified by the MacCrate Report, such as problem solving,<sup>186</sup> factual investigation,<sup>187</sup> communication,<sup>188</sup> counseling,<sup>189</sup> and negotiation.<sup>190</sup> Such

---

of a mandatory period of supervised practice before full admission.

184. Because the competent lawyer must always keep the potential of possible litigation in mind and therefore have regard to how a judge might ultimately decide a matter, the above discussion of judicial decision-making is also relevant. *See* MACCRATE REPORT, *supra* note 12, at 157 (Commentary to Skill 2: Legal Analysis and Reasoning, noting that in a wide variety of contexts beyond “decisionmakers in the traditional litigative sense of a judge, jury, or other neutral arbiter. . . . an individual or an organization is in a position to make decisions affecting the client, and a lawyer may need to use legal reasoning to gauge the best possible approach for dealing with that individual or organization. This is true, for example, in the negotiation of a commercial transaction, where legal reasoning may inform a lawyer’s approach to the party with whom he or she is negotiating.”). Regarding the potential for ADR decision-making, *see supra* text accompanying note 159 (discussing Skill 8: Litigation and Alternative Dispute-Resolution Procedures).

185. For example, a contract between the lawyer and the client, a contract between the parties, or a testator’s will.

186. *See* MACCRATE REPORT, *supra* note 12, at 142, 146, 150 (Skill 1: Problem Solving, emphasizing a “holistic approach to the assessment of a client’s situation” that has regard to non-legal factors involved in “[t]he legal, institutional, and interpersonal frameworks in which the problem is set,” the need to evaluate whether to seek expertise in “fields other than law,” and the “skill of creativity” that is crucial for the skill of problem solving, as well as “virtually all of the skills analyzed in the Statement,” and that entails having “a creative mind” that is “willing to look at situations, ideas, and issues in an openminded way; to explore novel and imaginative approaches; and to look for potentially useful connections and associations between apparently unrelated principles . . . facts . . . negotiating points . . . or other factors”).

187. *See id.* at 172 (emphasizing that the skill of factual investigation is relevant for “a wide range of contexts and types of decisionmak[ing]”); *see also supra* text accompanying

subject matter and courses are also valuable for developing and using the administrative skills necessary for the organization and management of legal work.<sup>191</sup>

*d. Some Additional Perspectives*

The coverage and treatment in two books devoted to addressing perspectives subject matter warrant relatively detailed consideration here because they provide greater insight into the nature of such material and its value in helping lawyers make sound decisions and evaluate and influence decisions by others. The first book, Bailey Kuklin and Jeffrey Stempel's *Foundations of the Law: An Interdisciplinary and Jurisprudential Primer*, contains chapters on: ethical theory and the law; law and economics; political philosophy and law; American governmental structure: its impact on law; law, dispute resolution, and the adversary system; and historical, jurisprudential, and multidisciplinary influences

---

note 157 (discussing Skill 4: Factual Investigation).

188. *See id.* at 172 (emphasizing that “[l]awyers employ communicative skills—including both written and oral forms of communication—in a wide variety of ways and in a wide range of contexts . . . includ[ing] . . . to advocate or persuade (such as, for example, . . . bargaining with an adversary); to advise or inform (for example, opinion letters to a client; orally counseling or giving legal advice to a client; briefing a senior partner); to elicit information (for example, interviews of clients or witnesses. . . .); and to establish legal obligations or effectuate legal transactions . . . .”); *see also supra* text accompanying note 158 (discussing Skill 5: Communication).

189. *See id.* at 177-85 (Skill 6: Counseling), especially at 177, 181-82, 184 (Skill 6.1 (a)(iii), 6.4 (d)(iv), and Commentary, stressing the need to attend to “considerations of justice, fairness, or morality” within the framework set by ethical standards, including attempting to persuade the client to accommodate these considerations, taking action to protect third parties or the general public, or withdrawing from representation), 177-78, 179, 181 (Skill 6.1 (b)(i), 6.2 (c)(iii), and 6.4 (d)(ii), identifying the importance of being sensitive to emotional reactions, interpersonal factors, and cultural differences), 182 (Skill 6.4(d)(v), recognizing that effective counseling may require the lawyer to give non-legal advice, such as “business advice or personal advice”); *see also id.* at 184 (Commentary to Skill 6, referring to Value 2), 213-14 (Value 2: Striving to Promote Justice, Fairness, and Morality, including the need to take justice, fairness, and morality into account, within the framework set by the ethical rules, when counseling clients or making decisions on their behalf).

190. *See id.* at 185-90 (Skill 7: Negotiation), especially at 187, 190 (Skill 7.1 (e)(i) and Commentary, recognizing the importance of certain aspects of “negotiation theory” and the additional value of “game theory models, economic models, and social-psychological bargaining theories”), 188 (Skill 7.1 (f)(i), recognizing the importance of factoring in various attributes of the other attorney including “personality”).

191. A familiarity with such matters as economics, business practice, moral reasoning, and psychology would seem to be particularly valuable. *See generally id.* at 199-203 (Skill 9: Organization and Management of Legal Work).

on law.<sup>192</sup> In a companion article discussing their reasons for writing the book, the authors state:

Although students cannot be expected to begin with enough law and legal history to maintain a critical perspective in the face of the portrayed certainty of assigned cases, students with some background in the underlying factors of the law and some analytic insight can arrive at their own criticism and assessments once they become confident enough to believe they can. Armed with sufficient tools, students can learn to become the discerning critics that classic legal education has been assumed to produce. Adequately grounded, students can do more than reproduce legal doctrine and internal debates about law, they can learn to advance beyond the conclusory rhetorical force of the cases. They can learn—as can we—to continue meaningful conversation in the face of well-placed “whys?.” Not forever, of course, as the postmodernists insist, for ultimately Santayana’s aphorism prevails at a point calling for active choice rather than a passive, necessary conclusion (e.g., “because the law here subscribes to utilitarian reasoning”). But at this point the students are in a position to broadly survey the entire legal terrain, if not its as-yet-unlearned structures, perceiving its breadth and depth, and understanding why legal reason ends where it does.

We felt strongly enough about this view to write a book supporting it, one that contends law today is dramatically molded by our learning regarding ethics, economics, political theory, American government structure, the adversary system, and (not surprisingly) jurisprudential movements. Therefore, we argue, most legal subjects can be effectively analyzed by reference to this broader legal learning. Because it reveals the pervasive forces molding the law, making the law more explicable, predictable and coherently moldable, we believe that law schools owe it to their students to ensure that they are all exposed to these basic foundational concepts. Assessing legal outcomes according to only, or even primarily, a decision’s internal consistency and relation to precedent and statute eliminates too much potential for teaching students to become discerning consumers of law rather than merely vessels for absorbing legal runoff. In particular, the standard case and problem methods of classroom instruction will be enriched by injecting foundational considerations and critique.

---

192. BAILEY KUKLIN & JEFFREY W. STEMPEL, *FOUNDATIONS OF THE LAW: AN INTERDISCIPLINARY AND JURISPRUDENTIAL PRIMER* (1994). Although two of these chapters, on the American governmental structure and on the adversary system, might appear to be more concerned with the structural dimensions of law than with the social or cultural dimensions, the authors’ approach is historical, jurisprudential, and comparative and is thus focused on the cultural dimensions of the governmental structure and the adversary system.

Embracing multidisciplinary perspectives, as an instrument, when closely examining course material cuts two ways. In one direction, the instrument is a microscope through which students will gain deeper insight into the law in general and specific issues. In the other direction, by looking through the instrument from the vantage point of the legal materials, it becomes a telescope through which the students will gain deeper insight into the nature and reach of these multidisciplinary materials. By struggling with the merits of a complex issue, students will better master the tools provided by ethics, economics, political theory, governmental structure, dispute resolution, jurisprudence, etc. Then, the comprehensive study becomes a two-way street. In both directions, the road leads to greater knowledge and understanding.<sup>193</sup>

The authors clearly believe that such knowledge and understanding will lead to improved legal outcomes. In their view, students become better “able to retain and use the law more effectively while evaluating the legal products with greater sophistication, thereby being better prepared to become law producers as well.”<sup>194</sup>

Kuklin and Stempel proceed from the premise, then, that “[e]thical, economic, political, governmental, structural, historical, sociological, psychological and jurisprudential currents energize the law from top to bottom, side to side, inside and out.”<sup>195</sup> In the Teacher’s Manual to their book, they detail, chapter by chapter, how the material “might best be interwoven with commonly offered law courses, paying particular attention to recurring issues in the law school and legal studies curriculum.”<sup>196</sup>

---

193. Bailey Kuklin & Jeffrey W. Stempel, *Continuing Classroom Conversation Beyond the Well-Placed “Whys?”*, 29 U. TOL. L. REV. 59, 60-61 (1997) (footnotes omitted). The authors invoke the aphorism “Four well-placed ‘whys?’ will stop any conversation,” noting that it is attributed to George Santayana. *Id.* at 59 n.1.

194. *Id.* at 65.

195. *Id.* at 66.

196. BAILEY KUKLIN & JEFFREY W. STEMPEL, FOUNDATIONS OF THE LAW: AN INTERDISCIPLINARY AND JURISPRUDENTIAL PRIMER: TEACHER’S MANUAL 9 (1994). Before this chapter-by-chapter discussion, however, they provide the following illuminating overview of the value of these perspectives in different areas of law:

The background provided in the book will give students additional perspective for “decoding” reported cases, statutes, and seeming inconsistencies in the law throughout the curriculum and in their future work.

Notwithstanding th[is] versatility . . . certain chapters in the book will be more apt for particular courses than others:

Chapter One, *Ethical Theory and the Law*, will be valuable reading for any jurisprudentially oriented course. It should have particular application to legal process, introduction to law or other initial courses in legal reasoning. It also has relevance for any course where issues of morality and justice are “front and center” in the curriculum, such as criminal law, criminal justice studies, and

The second book, David Crump's *How to Reason About the Law: An Interdisciplinary Approach to the Foundations of Public Policy*, addresses almost all the subjects addressed by Kuklin and Stempel and several others they do not address.<sup>197</sup> In his introduction the author explains the contents and purpose of the book:

This book is a kind of “thinker’s tool kit” for law students. It is a guide to clear legal reasoning.

---

public welfare law. In our view, however, justice issues should be addressed to some degree in all basic law courses.

Chapter Two, *Law and Economics*, also has wide application. To the extent that Law & Economics provides theories about human behavior and cost-benefit analysis, it becomes apparent why this movement has had so much impact on the law. But Law & Economics thinking probably fits best in courses where efficiency and distributional consequences are not too far below the surface of the black letter material. In this regard, courses in torts, compensation systems, contracts, property, and public policymaking will lend themselves quite readily to this material. It will also be useful in procedural courses regardless of whether the procedure is civil, criminal, or administrative. Again, we think this is “must” knowledge for students of the law.

Chapter Three, *Political Philosophy and Law*, has a wide application as well but perhaps fits most comfortably with “public” law courses (although we do not want to make too much of the public-private distinction). For example, this material can be readily employed in government law classes such as administrative law and can be of particular use in constitutional law and statutory interpretation courses.

Chapter Four, *American Government Structure: Its Impact on Law*, similarly has ready application to constitutional law and government law courses. It also is particularly apt for civil procedure courses, where students often do not see the frequent link between a society’s system of government and its system of litigation.

Chapter Five, *Law, Dispute Resolution, and the Adversary System*, is valuable in litigation-related courses for the same reason as above since it expressly discusses the adversary system, a topic that usually gets too little textual attention in most courses. Courses in civil procedure, criminal procedure, evidence, complex litigation and the like will perhaps be most apt for this chapter.

Chapter Six, *Historical, Jurisprudential, and Multidisciplinary Influences on Law*, can serve as an introduction or synopsis for even full-fledged jurisprudence, legal history, or legal theory courses. It is intended in the main, however, to be background reading across the modern law curriculum since so many legal outcomes depend upon the jurisprudential orientation of the legal decisionmaker.

*Id.* at 8-9.

197. DAVID CRUMP, *HOW TO REASON ABOUT THE LAW: AN INTERDISCIPLINARY APPROACH TO THE FOUNDATIONS OF PUBLIC POLICY* (2001). The book contains sections (which contain individual chapters) on logic and fallacy in the law; economics, finance, and markets (including management); ethical and political reasoning; science and the social sciences (science, jurisprudence, and psychology); probabilities and statistics in legal reasoning; game theory and strategy (including rhetoric). *Id.* However, it does not address the adversary system. *See id.*

The sources range from Plato to Pareto, from Kant to Clausewitz, from Rawls to Rousseau, from Freud to Friedman, and from Adam and Eve to Adam Smith. . . . [Y]ou will apply . . . these ideas to interdisciplinary issues of law and justice. . . .

[T]he purpose of this book is to cover methods of thinking, like Clausewitz's study of military strategy, that are useful in legal reasoning but get left out of a lot of peoples' educations. And besides Clausewitz, you will meet many more interesting characters in these pages. Did you know, for example, that there is a form of deductive logic named Barbara? . . .

You also will encounter the ontological proof of the existence of God, the Keynesian multiplier, the Coase Theorem, the trolley problem, and Arrow's Theorem of Public Choice, and you will apply each one of these ideas to issues of law and justice. . . .

All of these concepts are thinking tools. They can help you to analyze the arguments that other people make, as well as to develop your own. They can guide your thinking about issues of public policy, and they can sharpen your personal decisions. And every one of them will help you become a more competent student of the law. . . .

I included a big dose of economics. . . . The subject is vital for understanding public policy, and it is also important in personal decisions. . . .

I've also included some selected scientific principles. . . . [L]awyers frequently must contend with scientific issues, in lawsuits, in regulatory or legislative matters, and in real estate contracts, and it will be a serious disadvantage for your clients if your eyes glaze over anytime these issues arise.

There's also coverage of ethical philosophy, . . . psychology, political theory, probabilities, statistics, regression analysis, accounting, finance and management. . . .

[F]ew people, even if well educated, have mastered all the subjects in this book. Even fewer have applied them all to the law . . . .

[E]very time, this interdisciplinary approach will be tied to legal questions. The purpose is to make you a more complete lawyer.<sup>198</sup>

The subheadings for each chapter are additionally suggestive of the value of such perspectives in the practice of law.<sup>199</sup>

---

198. *Id.* at xxiii-xxvii.

199. The subheadings include: Logic (Syllogisms, Deduction, Induction, and Logical Propositions in the Law: From the IRAC Method to the Commerce Power); Fallacy (False Reasoning, Inquiry, and the Limits of Logic); Economics I (Prices, Markets, Economic Efficiency, and the Law); Economics II (Redressing Market Imperfections: Structure, Externalities, and Transaction Costs); Finance (Risk, Return, and Valuation; Accounting and the Law); Management (Organization, Decision-making, and Marketing Theory for Lawyers); Ethics (Teleology, Deontology, and Distributive and Procedural Justice); Politics (Democratic Institutions, Tradeoffs, and Public Choice); Science (Scientific Method and the

In short, as Kuklin, Stempel, and Crump rightly recognize, exposure to perspectives subject matter gives our students knowledge of important “sources of law” and skill in handling them, thereby enabling students to understand these sources and to make persuasive arguments.<sup>200</sup> As my colleague Jack Sammons and others emphasize, the work of the lawyer is that of the rhetorician who must seek, within the materials of the law, the arguments that most effectively further his or her client’s interests to the particular audience to which the arguments are addressed.<sup>201</sup> We do a serious disservice to our students, their future clients, the legal profession they will be joining, and the society of which we are all a part, if we fail to enable our students to develop the full range of arguments that may prove effective. Only by exposing them to perspectives subject matter do we endow our students with the capacity to argue with such breadth.

## 2. *Character—Qualities of Character, Lawyer Professionalism, and Sense of Calling*

Perspectives subject matter and courses also contribute to the formation of the good lawyer’s character and sense of calling. Although this contribution may be less immediately obvious than their contribution to the development of technical expertise, it is no less important.<sup>202</sup>

---

Law; History and the Social Sciences); Jurisprudence (Legal Theory, Rules, and Interpretation); Psychology (Psychological Disorders, Learning Theory, Intelligence, and Social Psychology); Probabilities (Probabilistic Reasoning in the Law, Bayes’ Theorem, and the Interval Distribution); Statistics (Sampling, Interpretation, Statistical Significance, and Regression Analysis in the Law); Game Theory I (Zero-Sum Games, Competitive Tactics, and the Law); Game Theory II (Cooperative Moves, Mixed-Motive Games, and Legal Strategies); Rhetoric (Strategies for Questioning, Listening, Persuasion, and Negotiation). *Id.* at v-xxii (Table of Contents).

200. Both books illustrate the value of such perspectives for a greater understanding of legal doctrine and for the skills involved in influencing decision-making in the context of judicial adjudication and legislative law reform. *See supra* notes 149-59, 173-79 and accompanying text; *see also supra* notes 180-83 (decision-making involved in applying or reforming other public or quasi-public normative orderings). However, the considerably greater range of subject matter in Crump’s book and the author’s treatment of this subject matter illustrate the value of such perspectives for influencing decision-making in other contexts also, such as counseling clients and representing them in negotiations, and for development and use of the skills involved. *See supra* notes 184-91 and accompanying text.

201. *See generally* Jack L. Sammons, *The Radical Ethics of Legal Rhetoricians*, 32 VAL. U. L. REV. 93 (1997); Jack L. Sammons, “Cheater!” *The Central Moral Admonition of Legal Ethics, Games, Lusory Attitudes, Internal Perspectives, and Justice*, 39 IDAHO L. REV. 273 (2002) [hereinafter Sammons, “Cheater!”].

202. One should remember, too, that in practice a lawyer’s character and technical expertise are necessarily interdependent. *See supra* text accompanying note 142.

The contribution of perspectives subject matter and courses to the formation of character and sense of calling may entail one or both of the forms of comparison identified in the discussion of technical expertise above.<sup>203</sup> It also entails a comparison of one's actual self with one's potential selves and/or with others. This latter form of comparison may be explicit and conscious, or it may be implicit and unconscious as the relevant perspectives experience works upon the soul of the student in subtle and unnoticed ways.

*a. General Qualities of Character*

As discussed earlier, the good and practically wise lawyer must be able to empathize and, at the same time, retain a sufficient degree of detachment to ensure independence of judgment.<sup>204</sup> Moreover, development of this bifocal capacity, which Anthony Kronman calls "sympathetic detachment,"<sup>205</sup> requires the training of perception, emotion, and moral imagination through the acquisition—personally or derivatively through others' accounts—of relevant experience.<sup>206</sup> Perspectives subject matter and perspectives courses can have a very important role to play in developing this critically important character trait.<sup>207</sup> Perspectives subject matter and courses, such as legal history, jurisprudence, and comparative law, typically encourage an exploration of diverse world-views, ideologies, and cultural narratives. The same may also be true of international law and even courses such as law and economics. To

---

203. See *supra* notes 147-48 and accompanying text.

204. See *supra* notes 63-67 and accompanying text; see also MACCRATE REPORT, *supra* note 12, at 173-75 (Skill 5: Communication, especially Skill 5.1, Skill 5.2 (a) (ii), and Skill 5.2(c), emphasizing the importance of understanding the perspective of others in both sending and receiving communications), 177-81 (Skill 6: Counseling, especially Skill 6.1 (b), Skill 6.2 (c), 6.4 (a), and 6.4 (d)(iii), emphasizing the need to see matters from the client's perspective while maintaining the necessary "dispassion and objectivity" in order to provide effective counseling), 187-89 (Skill 7: Negotiation, especially Skill 7.1 (f)(i), and Skill 7.2 (a) and (b), emphasizing the need to understand the perspective of the other party and the other party's counsel in order to negotiate effectively), 218 (Value 4: Professional Self-Development, especially Value 4.1 (a)(i)(IV), stressing the importance of evaluating "[t]he accuracy of one's assessments of the likely perspectives, concerns, and reactions of any individuals with whom one interacted (such as, for example, clients, other lawyers, judges, mediators, legislators, and government officials)" in order to learn from experience in seeking to increase one's knowledge and skills).

205. KRONMAN, *supra* note 45. For a discussion of the bifocal character of this disposition, see *id.* at 72-73.

206. See *supra* note 66 and accompanying text.

207. Other types of curricular experiences may also contribute to the development of this capacity. As mentioned *supra* text accompanying note 50, Kronman shows how this includes the case method of teaching itself, at least when done well.

encourage such an exploration, perspectives courses must challenge students to transcend their own “situatedness” and to “see the world” through the eyes of those who are different, sometimes extremely different. However wrong or even nonsensical the views or actions of other human beings may seem, the challenge is to try to understand why such views or actions nevertheless seem right and “make sense” to those who hold or take them. However, the process of “cultural immersion” involved in trying to achieve such sympathetic understanding only calls for suspension or postponement, and not an abdication, of judgment. It therefore requires that a certain degree of detachment be maintained as well.<sup>208</sup>

Further development of the capacity for sympathetic detachment through the study of perspectives subject matter and courses is especially valuable in contemporary circumstances. Such subject matter and courses typically expose students to a great range of “diversity.” This “diversity” includes the more familiar kinds such as race, gender, and sexual orientation, but it extends far beyond them to the point where, in the words of the Roman playwright Terence, “nothing human is foreign to me.”<sup>209</sup> The “moral cosmopolitanism”<sup>210</sup> that is central to such humanism does not necessarily preclude the need to make judgments, but it does help to ensure that such judgments are wise ones because they are informed by an understanding of the complexity of humanity and human experience.<sup>211</sup> This is not only helpful but

---

208. For a useful summary of the methodology of “cultural immersion” in comparative law (and more generally), see VIVIAN GROSSWALD CURRAN, *COMPARATIVE LAW* 120-23 (2002). See also KRONMAN, *supra* note 45, at 69-72 (comparing sympathetic detachment with the efforts of historians and anthropologists to “make sense of the experience of other people” who are “remote from them in time and cultural attitude”).

209. KRONMAN, *supra* note 45, at 159 (quoting the “old Roman motto” from Terence); see also ANTHONY T. KRONMAN, *EDUCATION’S END: WHY OUR COLLEGES AND UNIVERSITIES HAVE GIVEN UP ON THE MEANING OF LIFE* 153-59 (2007) [hereinafter KRONMAN, *EDUCATION’S END*] (comparing the “deeper and more challenging” kind of diversity, a “real and disturbing diversity,” celebrated by the ideal of secular humanism, with more limited and shallower kind of diversity promoted by the values of political liberalism and concerned with matters of race, gender, and ethnicity). Kronman is emphatically not opposed to promoting liberal diversity in the political community or in higher education; he is opposed, however, to allowing an overriding concern with such diversity to constrain exploration of deeper questions of meaning. *Id.* at 154-55.

210. KRONMAN, *supra* note 45, at 159.

211. I would argue that it also contributes to development of the “skill of creativity” that the MacCrate Report identifies as “crucial for the effective application of virtually all the skills analyzed in the Statement” and that this is also a vital part of the “sound judgment” that the MacCrate Report identifies as another such crucial and generally applicable attribute. See MACCRATE REPORT, *supra* note 12, at 150; see also *supra* note 186 (discussing the “skill of creativity” in the context of Skill 1: Problem Solving).

essential to any vision of good lawyering in a society as pluralistic as U.S. society today.<sup>212</sup> Moreover, this pluralism is magnified when one's legal practice acquires any kind of transnational dimension, which is increasingly likely in our era of globalization.<sup>213</sup>

*b. Lawyer Professionalism*

Perspectives subject matter and courses directly contribute to further development of the qualities of character identified by the ABA Professionalism Committee<sup>214</sup> and the values identified by the MacCrate Report.<sup>215</sup>

---

212. Cf. MACCRATE REPORT, *supra* note 12, at 213-14 (Value 2: Striving to Promote Justice, Fairness, and Morality, which also includes “[t]reating other people (including clients, other attorneys, and support personnel) with dignity and respect,” including “refraining from sexual harassment and from any form of discrimination on the basis of gender, race, religion, ethnic origin, sexual orientation, age, or disability”), 216-17 (Value 3: Striving to Improve the Profession, which includes “striv[ing] to rid the profession of the existence and effects of bias based on race, religion, ethnic origin, gender, sexual orientation, age, or disability”).

213. See KRONMAN, EDUCATION'S END, *supra* note 209, at 165-66 n.22 (emphasizing the value of multicultural understanding in today's world and citing, and quoting, MARTHA C. NUSSBAUM, CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN HIGHER EDUCATION 50-84, 63 (1997) (“The task of world citizenship requires the would-be world citizen to become a sensitive and empathetic interpreter. Education at all ages should cultivate the capacity for such interpreting.”)).

214. See *supra* notes 72-76 and accompanying text.

215. See *supra* notes 77-78 and accompanying text. Beyond these, one of the specific Skills identified by the MacCrate Report is also highly relevant in this context. See MACCRATE REPORT, *supra* note 12, at 203-07 (Skill 10: Recognizing and Resolving Ethical Dilemmas). For further discussion of this Skill, see *supra* note 182 and accompanying text. See also *supra* text accompanying note 155 (discussing the relevance, for Skill 2: Legal Analysis and Reasoning, of Value 2: Striving to Promote Justice, Fairness, and Morality), note 157 (discussing the relevance, for Skill 4: Factual Investigation, of Value 1: Provision of Competent Representation and Value 4: Professional Self-Development), note 176 (discussing the relevance, for Skill 3: Legal Research related to law reform efforts, of Value 2: Striving to Promote Justice, Fairness, and Morality), note 189 (discussing the relevance, for Skill 6: Counseling, of Value 2: Striving to Promote Justice, Fairness, and Morality), and MACCRATE REPORT, *supra* note 12, at 213-14 (Commentary to Value 2: Striving to Promote Justice, Fairness, and Morality, identifying those “qualities” that have constituted the lawyer's “moral character” throughout the centuries, including “those qualities of truth-speaking, of a high sense of honor, of granite discretion, [and] of the strictest observance of fiduciary responsibility”).

Perspectives subject matter and courses also contribute *indirectly* to these qualities of character in that the capacity for sympathetic detachment—for empathy and for independence of judgment—is itself central to the proper structuring of relationships with both the client and others that is at the heart of these qualities; and, as discussed *supra* notes 204-13 and accompanying text, perspectives subject matter and perspectives courses have an important role in shaping and strengthening this capacity further.

Attributes such as ethical conduct and integrity, dedication to justice and the public good, and the capacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system all require in differing modes and combinations the classical virtues of courage, temperance, and justice, as well as the ability to engage in good moral reasoning with oneself and others—so, of course, do attributes such as maintenance of competence, thoroughness of preparation, subordination of personal interests and viewpoints to interests of clients and the public good, appropriate deportment and civility, and economic temperance. These virtues and moral reasoning abilities, in turn, all have their part to play in exercising the master virtue of practical wisdom in any given set of circumstances. And they can all be further shaped and strengthened by perspectives subject matter and perspectives courses.

Who can fail to be touched, inspired, even transformed, by reading the various powerful accounts of justice that have been offered throughout the ages,<sup>216</sup> or the narratives of injustice and the struggles for justice that have marked human history, or philosophical accounts of moral reasoning or the great virtues?<sup>217</sup> Such matters can only be properly appreciated when they are understood in their particular historical, intellectual, and cultural contexts. And who can then fail to be touched, inspired, even transformed, by studying the roots of the modern West and Western law in the civilizations and moral and legal orders of the ancient world and of medieval Europe, or the history and the moral and legal orders of non-Western cultures, or the remarkable moral achievements of the modern West and Western law themselves, or the efforts of international society and the international legal order to promote peace, justice, and prosperity? If the gods smile upon us, such experiences and perspectives may also help to combat our human tendency towards hubris by promoting the additional virtue of proper humility.<sup>218</sup>

---

216. Whether the fiery passion of the Hebrew Prophets or the cooler rationality of Rawls.

217. Or by depictions of historical figures who instantiated these virtues—Socrates, for example, or Jesus or Muhammad or Cicero or Thomas More (the patron saint of lawyers) or Abraham Lincoln (arguably the patron saint of American lawyers) or Ghandi (arguably the patron saint of Third World lawyers) or Martin Luther King?

218. *Cf. supra* note 68 and accompanying text. We may be moved to such humility by the realization that, for all the achievements of the modern West, including the material improvements wrought by the marvels of modern science and technology, we are indeed “dwarves perched on the shoulders of giants”; by dissolution of the simplistic caricatures under which we usually labor in our encounters with non-Western cultures (Islamic civilization or Chinese civilization or indigenous peoples, for example) and by recognition

*c. Sense of Calling, Purpose, and Professional Identity*

Perspectives subject matter and courses directly contribute to cultivation of the sense of professional calling, purpose, and professional identity.<sup>219</sup> The type of touching, inspiration, or transformation described above situates the student within larger structures or narratives of meaning and purpose.<sup>220</sup> As a result, the student is better situated to discover the meaning of both terms in Frederick Buechner's definition of vocation as "the place where your deep gladness and the world's deep hunger meet."<sup>221</sup> The quest to discover that deep gladness and that deep need is, of course, a profoundly personal one. In this way, we can also think of perspectives subject matter and courses as exploring the vital "interrogative of professional identity" that asks where I am as part of the larger human story of law and lawyering (historically, philosophically, ideologically, comparatively, etc.), and the exploration of that question helps us to answer the other interrogatives of identity.<sup>222</sup> Once I have a better understanding of *where* I am in this larger sense, I am literally better situated to discover *why* I am in law school, *what* I want in life, and *who* I am. The larger "where" question is central to the overall quest for meaning and identity.

Finding meaning in one's work is crucial to doing it well, and doing work well is crucial for living a life well lived. By helping students to see the law and lawyering in context, perspectives subject matter and courses enable them to forge a connection to the animating purposes and accomplishments of the law and the legal profession. They are then able to see themselves as serving those larger animating purposes and

---

of the wisdom they carry; by awareness of the distinctiveness, fragility, and preciousness of our own moral achievements in the West; and by appreciation of the limits as well as the promise of international law in controlling the worse angels of our nature. The expression "dwarves perched on the shoulders of giants" was first attributed to Bernard of Chartres by John of Salisbury in the twelfth century. See *THE METALOGICON OF JOHN OF SALISBURY* 167 (1955).

219. Perspectives subject matter and courses also contribute *indirectly* to cultivation of the sense of calling insofar as they help to develop the various attributes of the good and practically wise lawyer in all the ways already discussed and insofar as becoming a good and practically wise lawyer is its own calling.

220. Cf. KRONMAN, *EDUCATION'S END*, *supra* note 209, at 76-87 (discussing three assumptions underlying the educational philosophy of secular humanism and emphasizing the need for human beings to locate themselves within larger and more lasting "structures of value," such as those explored in the "great conversation" that is the focus of the tradition of arts and letters, "as a condition of their living purposeful lives").

221. FREDERICK BUECHNER, *WISHFUL THINKING: A SEEKER'S ABC* 119 (1993).

222. For discussion of various issues and questions related to professional identity, see Floyd, *supra* note 58.

accomplishments—to “find” their “selves” *in* those purposes and accomplishments—and to be motivated by this vision in their work.<sup>223</sup> We do a serious disservice to our students, the clients they will be serving, the legal profession they will be joining, and the society of which we are all a part, if we fail to reinforce these larger, more ennobling visions in every way possible.<sup>224</sup>

---

223. Such ability helps them avoid an alternative vision—a corrupting, diminishing vision—in which they see themselves as mere instruments seeking to unleash the coercive force of the state in service to the selfish interests of money or power, whether those selfish interests be those of their clients, their own, or both. One must be careful here, of course. There is risk of “corruption” even if the lawyer seeks to attain the “higher” type of external goods (as opposed to “lower” external goods such as money or power) but does so without regard to whether such goods may have been appropriately refracted or inflected or modulated into a profession-specific form within the practice and thus may have become internal goods of the practice itself. This is because in such circumstances even the “higher” type of motivation may tempt the lawyer to “cheat” and thus have the undesirable result of effectively disabling the lawyer from attaining the internal goods of the practice, including acquiring the practical wisdom of the practice and/or exercising such practical wisdom in any given case or in general depending on the extent, duration, and intensity of such motivation. Moreover, to the extent the lawyer views the profession as a mere instrument for achieving such external goods, however worthy, the lawyer is arguably called to those external goods and not to the profession itself. This not only suggests that having the appropriate vocational disposition or sense of calling is one of the necessary qualities of character required by the good lawyer as part of the ensemble of professional attributes. It also suggests the need for practical wisdom in the process of vocational discernment itself. I am indebted to my colleague Jack Sammons for bringing this point to my attention. For an excellent and illuminating discussion of the notion of “cheating” as applied to legal practice, see Sammons, “*Cheater!*”, *supra* note 201.

Perhaps of some relevance in this context too is the MacCrate Report’s admonition that a lawyer should remain “constantly alert to the existence of problems that may impede or impair the lawyer’s ability to provide competent representation (such as alcohol abuse, drug abuse, psychological or emotional problems, senility, or other types of health problems).” MACCRATE REPORT, *supra* note 12, at 209, 12 (Value 1.2 (d)(i) and Commentary).

224. All this finds ample and authoritative confirmation in the long-standing tradition of recommended lists of supplementary reading intended to produce liberally-educated lawyers going back to the days of Justice Story at Harvard Law School in the early nineteenth century. For further discussion of the Harvard Law School curricular model and the supplementation of the curriculum by such recommended reading lists under Justice Story and his successors during the first phase, see Jones, *Historical Framework Phase I*, *supra* note 2, at 1085-87. For a relatively recent and remarkable example of the genre, see JULIUS J. MARKE & EDWARD J. BANDER, DEANS’ LIST OF RECOMMENDED READING FOR PRELAW AND LAW STUDENTS: SELECTED BY THE DEANS AND FACULTIES OF AMERICAN LAW SCHOOLS (2d ed. 1984). Significantly, the authors of the prefatory and introductory comments claim that this annotated list contains “all the hallowed names of men and women who have contributed to law as known in our Western civilization,” including “a galaxy of names connected with other disciplines,” and represents “a vital compilation of books with which people involved in the legal profession should be familiar.” *Id.* at xiii, xv.

*B. Ensuring A Serious and Sustained Perspectives Exposure in the Curriculum*

The ABA Professionalism Committee, the Carnegie Foundation Report on Educating Lawyers, and the Study on Best Practices for Legal Education all recognize the value of perspectives subject matter and courses and the need to ensure that students receive a serious and sustained perspectives exposure during their legal education. They also all acknowledge that law schools should ensure that students receive the necessary experiences through a strategy that combines exposure in special dedicated courses with incorporation of relevant exposure into other courses.

*1. The Need to Ensure A Serious and Sustained Perspectives Exposure*

In its recent studies and reports on professional education, the Carnegie Foundation for the Advancement of Teaching has employed a framework recognizing what it calls “The Three Apprenticeships of Professional Education”: the intellectual or cognitive apprenticeship (focused on “the knowledge and way of thinking of the profession”); the practice-based apprenticeship (focused on “the forms of expert practice shared by competent practitioners”); and the ethical-social apprenticeship or apprenticeship of identity and purpose (focused on “the purposes and attitudes that are guided by the values for which the professional community is responsible”).<sup>225</sup> The Carnegie Report on Educating Lawyers finds an imbalance in standard legal education resulting from an excessive emphasis upon the cognitive or intellectual apprenticeship and calls for an integrative rebalancing that would give appropriate weight to all three apprenticeships.<sup>226</sup>

Three aspects of the Carnegie Report are especially relevant to the present discussion of perspectives subject matter and courses. First, the report recognizes that the third apprenticeship “also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires.”<sup>227</sup> Second, the report discovers a “curricular emphasis on

---

They suggest, too, that the list will assist faculty “to train students in the grand manner,” and express their belief “that as [readers] peruse the ideas and ideals of our antecedents they will understand why the law is a great calling, and that those who decide to pursue a career in the law will hear the call.” *Id.*

225. SULLIVAN ET AL., EDUCATING LAWYERS, *supra* note 15, at 27-29.

226. *See generally id.*

227. *Id.* at 28.

analysis and technical competence at the expense of human connection, social context, and social consequences [that] is reinforced by the broader culture in most law schools,” and it finds that “a concentrated focus on the details of particular legal cases, disconnected from consideration of the larger purposes of the law,” begins in the first year when “students are told repeatedly to focus on the procedural and formal aspects of legal reasoning, its ‘hard’ edge, with the ‘soft’ sides of law, especially moral concerns or compassion for clients and concerns for substantive justice, either tacitly or explicitly pushed to the sidelines.”<sup>228</sup> Third, the report maintains that “[a] more integrated drawing together of the three apprenticeships could enable students to place their learning of legal reasoning . . . within a fuller understanding of law as a moral and social institution,” and it recommends “an integrative strategy [that] . . . would, from the outset, link the learning of legal reasoning more directly with consideration of the historical, social, and philosophical dimensions of law and the legal profession, including some cross-national comparison . . . .”<sup>229</sup> The report observes that “[s]uch a rich intellectual matrix would provide a concrete context within which students could pursue a fuller ‘theorizing of legal practice,’ including their own future roles and responsibilities.”<sup>230</sup>

Very clearly, then, the Carnegie Report contends that law schools should pay more attention to perspectives subject matter addressing the social, cultural, and transnational dimensions of law and lawyering. Moreover, the report underlines that law schools should do so “from the outset.”<sup>231</sup>

Like the Carnegie Foundation Report, the Study on Best Practices also emphasizes “the value of broad-based legal education,”<sup>232</sup> stating that “[t]he preparation of students for practice involves much more than simply training students to perform mechanical lawyering tasks.”<sup>233</sup> The study quotes with approval the following reflections by Alan Watson in response to suggestions from his students that “the sole, or virtually sole, purpose of a law school should be to provide training for the practice of law”:

There is so much more to the law, even for the practice of law, than that: issues such as the social functions of law, the factors that influence legal development, patterns of change, the interaction of law

---

228. *Id.* at 139, 141.

229. *Id.* at 194.

230. *Id.*

231. *Supra* note 229 and accompanying text.

232. STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 18.

233. *Id.* at 17.

with other forms of social control such as religion, and, of course, the relationship of law and ethics. Law students should be trained to have a greater awareness of their role in society. Law school is *the* obvious place and time for presenting the greater dimension of law. Law teachers should cater to the needs of the lawyer philosopher as well as the lawyer plumber. Both types of lawyer are necessary for a healthy society.<sup>234</sup>

More specifically, the authors maintain that first-year students

should be introduced to jurisprudence, the history and values of the legal profession and professions in general, notable figures in the law, the role of lawyers, the ways in which legal problems arise and are resolved in our society and other societies, and challenges facing the legal profession such as commercialization, accountability, and access to justice.<sup>235</sup>

The Study on Best Practices similarly endorses the integrative and pervasive approach towards legal education.<sup>236</sup>

## 2. *Strategies for Ensuring a Serious and Sustained Perspectives Exposure and the Need for a Perspectives Course Requirement*

One strategy for providing integrated perspectives exposure that is adequate and effective<sup>237</sup> is to incorporate perspectives exposure to the social, cultural, and transnational dimensions of law into law school

---

234. *Id.* (quoting Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL EDUC. 91, 93 (2001)); see also *id.* at 50-55 (describing various statements of “desirable outcomes” of legal education, that is, “the core general characteristics and abilities that we might want new lawyers to possess”). As observed *supra* text accompanying note 59, two of these statements (by Lasso and Mudd) explicitly, and several others implicitly, include “perspective” as a desirable outcome. *Id.*

235. STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 276.

236. *Id.* at 97-104. As far as the ABA Professionalism Committee is concerned, it is clear from its specific recommendations to law schools for teaching ethics and professionalism by the pervasive method, discussed *infra* note 244, that the Committee also recognizes the value of perspectives subject matter and courses, the need to ensure that students receive a serious and sustained perspectives exposure during their legal education, and the desirability of providing this exposure through an integrative and pervasive approach.

237. The extent to which a law school curriculum provides adequate and effective perspectives exposure depends upon several factors. In the first instance, of course, it depends upon the extent to which the exposure actually occurs. For a theoretical framework that identifies and analyzes three factors relevant to determining the extent to which a law school curriculum actually exposes students to a particular set of fundamental dimensions of law, as well as four factors relevant to determining whether the actual exposure is effective (or, as presently formulated, adequate and effective), see Jones, *Theoretical Framework*, *supra* note 2, at 622-29; Jones, *Historical Framework Phase I*, *supra* note 2, at 1172-74. The present discussion will draw upon this theoretical framework.

courses with a primary emphasis upon other fundamental dimensions. For example, material on economic analysis or relevant international treaties or foreign law might be incorporated into a course on contracts or torts, or material on moral responsibility or neuroscience might be incorporated into a course on criminal law.<sup>238</sup> This strategy for exposing students to the richness and diversity of the law and lawyering, and thereby helping them develop key aspects of “practical wisdom” and “thinking like a good lawyer,” offers the distinct and commendable advantage of enabling students to understand how such perspectives subject matter applies in concrete, practical contexts.<sup>239</sup>

The incorporation strategy presents two problems, however. First, because there is never enough time in a course to cover all the possible topics, faculty must ration the limited time available. Because of the persistent neo-Langdellian prejudice discussed earlier,<sup>240</sup> when we have to make choices about coverage, we invariably sacrifice the historical or international or comparative or jurisprudential or ethical or other perspectives material in favor of the “essential” legal material that we “must” cover. Because the prejudice tells us that the perspectives material is not “the real thing” but really just “enrichment,” we will either not assign it at all or optimistically assign it as independent reading that may or, more likely, may not be tested on the examination. Even assuming that students do such independent reading, their exposure is likely inadequate and considerably reduced in effectiveness because the material is not addressed in class.

Second, even assuming faculty cover perspectives material when it is incorporated in their courses, are we not unwittingly offering students bits and pieces of perspectives subject matter that, wrenched out of their disciplinary context, defy proper appreciation and comprehension?<sup>241</sup>

---

238. As further examples, material on political theory might be incorporated into constitutional law, or material on relevant English legal history might be incorporated into a course on property law.

239. See Jones, *Theoretical Framework*, *supra* note 2, at 629 (noting “the important issue . . . of how well the various mental structures pertaining to different sets (and subsets) of fundamental dimensions of law are integrated with each other and the extent, therefore, to which mental structures are ‘multicontextual,’ enabling their owners to deal effectively and efficiently with the *total* context of a given legal situation”).

240. See *supra* notes 18, 40 and accompanying text.

241. At the risk of appearing whimsical, one can envisage something like a little bit of Aristotle here, and a little bit of Plato (or perhaps a little bit of Kant) there, potted or original (probably potted), or a little bit of American legal history here and a little bit of Civil Law (or, if we are really daring, a little bit of Islamic Law) there (perhaps also throwing in a little bit of international law for good measure), or a little bit of economics here (Coase is always good) and a little bit of sociology or cognitive psychology there. The metaphor of Humpty Dumpty comes to mind, especially if one sees him as not just falling

In short, exposure provided through the incorporation strategy is likely to be partial, nonsystematic, and fragmented.<sup>242</sup>

The obvious solution to the second problem presented by the incorporation strategy is to complement that strategy with serious and sustained perspectives exposure in specifically dedicated courses. In short, mount freestanding courses with a primary focus upon the social, cultural, and various transnational dimensions of law. Through such a dedicated courses strategy, the curriculum can provide perspectives exposure that is (a) systematic and integrative with regard to the particular perspective(s) addressed and (b) increasingly comprehensive as the range and diversity of the perspectives included in the coverage increases.<sup>243</sup> By combining the two strategies, the curriculum can provide perspectives exposure that is highly contextual along both horizontal and vertical axes. And to *ensure* that students receive the dedicated perspectives exposure needed to complement the incorporated one, that exposure must be required.

Adopting a combined strategy for providing appropriate perspectives exposure is hardly a novel idea. Such a strategy is common in the areas of skills training, ethics, and professionalism. And it is a strategy that is endorsed and recommended by the ABA Professionalism Committee Report,<sup>244</sup> the Carnegie Foundation Report,<sup>245</sup> and the Study on Best

---

but as being pushed—by post-Enlightenment analytical, mechanical, and reductionist thinking (with Langdell cheering and pushing hard as well).

242. It may appear that in pointing out these two problems, I am making unwarranted assertions. Ideally, one would like to have adequate empirical data, generated by appropriate surveys, regarding these matters. However, I do have some basis for making these claims. Thus, I am just as guilty as anyone of treating the perspectives material in some of my courses as being of secondary importance. For the past four years, I have not covered the morality and policy chapter included in the Immigration Law casebook I use because “the law” (the statutory, regulatory, and other administrative material) governing the areas we need to cover has grown so much in recent years and I am too pressed for time. Instead, I have assigned this material as independent reading that the students must complete before the end of the course. I do still cover the historical material in class. However, I do not directly test the students’ knowledge of any of this material on the exam (time and coverage again). And in those years when I have covered the morality and policy material in class, I have been comfortable addressing the former but have felt out of my depth with some of the latter (especially the economics material). So, I claim no special virtue and, for some types of material, I claim no special expertise. Perhaps I am alone in this, but I suspect not.

243. Of course, a dedicated courses strategy is even more necessary to the extent the first problem faced by the incorporation strategy is present as well.

244. See PROFESSIONALISM COMMITTEE REPORT, *supra* note 13, at 21 (footnotes omitted) (including among the Committee’s recommendations to law schools for teaching legal ethics and professionalism by the pervasive method “[t]he development of additional perspective courses and seminars that focus on multiculturalism and diversity, the internationalization

Practices.<sup>246</sup> But why must a dedicated perspectives exposure be required? Perspectives courses addressing the social, cultural, and transnational dimensions of law have proliferated in recent decades. Given that law school curricula typically include many dedicated

---

and globalization of law and law practice, jurisprudence, legal history, and professionalism issues such as the strengths and weaknesses of our justice system. . . ."); *id.* at 20 & n.50 (including among those same recommendations “a course, or alternatively a lecture series, introducing first-year law students to important ethical and professionalism issues” and listing the Kuklin and Stempel book, discussed *supra* notes 192-96 and accompanying text, as one of the possible suitable texts that could be used); *see also id.* at 15 (discussing, with approval, Notre Dame’s “perspective course requirement, which can be met by a number of different courses”). For the Professionalism Committee’s understanding of the “pervasive method” in teaching ethics and professionalism, *see supra* text accompanying note 123.

245. *See* SULLIVAN ET AL., EDUCATING LAWYERS, *supra* note 15, at 196-97 (“We believe that the demands of an integrative approach require *both* attention to how fully issues of the ethical-social apprenticeship ‘pervade’ the doctrinal and lawyering curricula *and* the provision of educational experiences directly concerned with the values and situation of the law and the legal profession.”); *see also id.* at 153 (discussing with approval various U.S. and Canadian “first-year courses or programs that provide a broad intellectual perspective on the law,” and singling out the required semester and a half Perspectives on Law course at the University of British Columbia, which “consists of three six-week segments or modules, each taught by a different instructor,” with students choosing among “topics like comparative law, environmental ethics and law, feminist perspectives on law, First Nation perspectives, obedience to law, and law and economics”).

246. *See* STUCKEY ET AL., BEST PRACTICES, *supra* note 16, at 286 (emphasizing the need for law schools to exercise leadership, and characterizing the curricular changes adopted by Harvard Law School in 2006 under the leadership of then-Dean Elena Kagan, including the addition of three new required courses in the first year with consequent reduction in the hours allocated to five traditional doctrinal first-year courses, as well as redesign of the second and third years, as “steps in the right direction” suggesting that “Harvard Law School [may] lead the way out of the quagmire that it inadvertently led legal education into 130 years ago”). The Best Practices Study cites an article in the publication Harvard Law Today explaining that the curricular changes seek to ensure *inter alia* “[s]ystematic attention to international and comparative law and economic systems” and “[m]ore sustained opportunities to reflect on the entire enterprise of law and legal studies, the assumptions and methods of contemporary U.S. law, and the perspectives provided by other systems and disciplines.” *Rethinking Langdell: Historic Changes in 1L Curriculum Set Stage for New Upper-Level Programs of Study*, HARV. L. TODAY, Dec. 2006, at 5, available at [http://www.law.harvard.edu/news/today/dec\\_hlt\\_langdell.pdf](http://www.law.harvard.edu/news/today/dec_hlt_langdell.pdf). More specifically, in addition to a course focusing on legislation and regulation, first-year students are also required to take “one of three specialty crafted courses introducing global legal systems and concerns [and] a course focusing on problem solving, which also will introduce students to theoretical frameworks illuminating legal doctrines and institutions.” *Id.* The article further explains that these changes complement curricular reforms in the second and third years “which promote more focused, interdisciplinary programs of study in the following categories: Law and Government; Law and Business; Law, Science and Technology; Law and the International Sphere; and Law and Social Change.” *Id.*

perspectives courses,<sup>247</sup> wouldn't students take such a course anyway? In fact, the experience at various law schools without a dedicated perspectives course requirement is not especially encouraging. It appears that because of our old friend, the neo-Langdellian prejudice, a great deal turns on whether these courses are required, strongly recommended, or "mere electives."<sup>248</sup>

Under the influence of the neo-Langdellian prejudice, most students will likely elect not to take any dedicated perspectives courses that are "mere electives"—that is, courses that are not regarded as being of such fundamental value and importance that they should be required or at least strongly recommended. Although more students are likely to take such courses if there is a collective institutional "strong recommendation" that they do so, a significant proportion of students may still decide not to follow that recommendation. Because of the neo-Langdellian prejudice, students will gravitate towards courses, and some faculty may steer them towards courses, that address "real law."<sup>249</sup> Such behavior reflects a failure to recognize the practical and professional value of perspectives subject matter and courses or a mistaken belief that whatever practical and professional value perspectives subject matter may have is realized by a broad mandate to faculty to incorporate some such subject matter in their courses, or both.<sup>250</sup>

---

247. See, e.g., Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524 (1997) (analyzing new upper-class courses and seminars added to U.S. law school curricula in 1994-97); Am. Bar Ass'n, *A Survey of Law School Curricula 1992-2002* (2004) (analyzing U.S. law school curricular developments and trends between 1992 and 2002).

248. It is very important not to be misled by appearances, and especially not by the number of dedicated perspectives courses in the curriculum. The degree to which a law school curriculum actually exposes students to perspectives subject matter in such dedicated courses depends not only upon the *number of courses* in the curriculum but also upon the *percentage of students* who take such courses and how many of them they take (that is, the percentage of students who take one such course, two such courses, three such courses, and so on).

249. Students and faculty may favor a particular perspectives course, however, if it seems to serve a student's chosen specialized career path (however temporary that choice may prove to be after graduation).

250. Once again, it may appear that I am making unwarranted assertions in the text, and once again it would be helpful to have adequate empirical data, generated by appropriate surveys, regarding these matters. However, once again, too, I do have some basis for making these claims. Thus, as part of a survey of law school registrars on their listserve, discussed *infra* note 253, I also sought an estimate of the percentage of students who took a perspectives course, as understood in this Article, at those schools without a perspectives requirement. Although I received only three replies supplying such information, and the sample is therefore too small to justify any definite conclusions, the answers—ranging from "about 10%" through "less than 50%" to "about 85%"—are

The *only* way, then, to *ensure* that law students receive the necessary perspectives exposure in dedicated courses is to impose a curricular requirement. Only in *this* way is it possible to combat the persistent influence of the neo-Langdellian prejudice effectively.<sup>251</sup> Doubtless this helps to explain why the ABA Professionalism Committee Report, the Carnegie Foundation Report, and the Best Practices Study all approve of such requirements.<sup>252</sup> And doubtless it helps to explain, too, why many law schools include a perspectives requirement in their curriculum.<sup>253</sup>

---

nevertheless suggestive that there is likely to be considerable variation among schools. At none of the three schools, it should be noted, was there a collective institutional recommendation that students take a perspectives course.

At Mercer, where the faculty has not replaced the requirement that students take a perspectives course with an institutional *strong* recommendation that they do so, preliminary figures for the first group of students to be affected by the change suggest that by the time they graduate approximately 65% will have elected to take a perspectives course.

251. It is perhaps ironic that law schools typically continue to require many courses, especially in the first year, that are supported by the neo-Langdellian prejudice. Precisely because they are so supported, these courses are the ones least in need of curricular defense through the imposition of a requirement because virtually all, if not indeed all, students would take them anyway—in their minds, these courses, unlike perspectives courses, concern “real law,” and of course, they are tested on the Bar examination.

252. See *supra* notes 244-46 and accompanying text.

253. I conducted a survey on the law school associate deans listserv in February 2012 and a survey on the law school registrars listserv in March 2012 requesting information regarding perspectives courses and perspectives requirements or recommendations. These surveys together generated replies from twenty-nine schools. In addition, in January 2012 I also conducted a quick and definitely non-exhaustive Internet search using the search term “law school curriculum perspectives course requirements,” <http://www.bing.com/search?q=law+school+curriculum+perspectives+course+requirements&qsn&sk=&pc=MDDR&x=148&y=14&first=1&FORM=PERE>.

As a result of these inquiries, I have been able to ascertain that, in addition to Harvard, the following twenty-three law schools require their students to take a perspectives course more or less as understood in this Article: Baltimore, Boston College, Campbell, Capital, Cleveland-Marshall, Georgetown, Gonzaga, Louisville, Loyola Chicago, Loyola Los Angeles, Loyola New Orleans, Louisiana State University, Marquette, New Mexico, Northwestern, Pennsylvania, St. Mary’s, South Carolina, Suffolk, Tennessee, Touro, Valparaiso, and Washburn. Given the limited response to my surveys and the cursory nature of my Internet search, it is very likely that several other law schools also impose a perspectives requirement.

Notre Dame no longer has a perspectives course requirement as such (see *supra* text accompanying note 244), but students must take a required course in Jurisprudence. Moreover, Notre Dame also recommends that students take a perspectives course as well.

Some other law schools, such as Cornell, do not impose any requirement but recommend that students take a perspectives course. Mercer has now joined this group. (Sources on file with Author).

There is a legitimate concern that because students may resent and have little enthusiasm for upper-class requirements after a year of required courses, the imposition of an upper class perspectives course requirement may impede the learning process and prove counter-productive. In meeting this concern, there may be some circumstances, arguably, where a strong recommendation may be more effective than a requirement. Consideration of three variables is suggestive of the possible need for nuance. First, the proportion of required courses in the upper-class curriculum may help determine student reaction. Thus, if a school requires little after the first year or, as at Yale, after the first semester, a strong recommendation may carry special weight. Conversely, the more a school requires after the first year, the stronger the message that non-prescribed courses are not important to take, even if strongly recommended. Second, a strong recommendation may carry more weight with a smaller student body where students know the faculty better. Third, such a recommendation may also carry more weight with a student body whose interests more readily incline in the direction of perspectives courses.

A separate but important question is whether, if a dedicated perspectives course is required, the requirement should take the form of a first-year requirement. If the faculty wishes to convey a message of importance, there is no better way to do so than placing the requirement in the first year. By the same token, it is reasonable to ask whether the absence in the first year of a perspectives course sends a message of relative unimportance that even an upper-class perspectives requirement may be unable to dispel.<sup>254</sup>

If a law school curriculum does require students to take a perspectives course, there can still be issues regarding the adequacy and effectiveness of the exposure provided.<sup>255</sup> First, students may prioritize courses addressing “real law” when rationing their limited time and effort, paying less attention to the perspectives course in their preparation and review. Second, a requirement that students take one from a slate of perspectives courses risks sending an institutional signal that, in the words of one scholar, “what is viewed as beneficial is the abstract idea

---

254. Moreover, it would seem dubious to maintain that a dedicated perspectives exposure could only be properly understood or appreciated following acquisition of the the building blocks in the first year. I am indebted to my colleague Dean Gary Simson for the insights in those two paragraphs.

255. The three issues discussed in this paragraph are interconnected and reflect, once again, the continuing influence of the neo-Langdellian prejudice. Moreover, the issues and their suggested solution also apply where a school adopts a strong recommendation instead of a requirement.

of ‘perspective’ and not the particular type of perspective to be gained from a given course.”<sup>256</sup> Consequently, “[o]ne perspective course, it seems, is as valuable as another,” which “could be interpreted to mean, of course, that none has any particular value, or that ‘perspective’ can be acquired by taking a course or two,” a view that “is ultimately not inconsistent with the belief . . . that such courses remain, when all is said and done, but frills.”<sup>257</sup> Third, although a course addressing a particular type of perspectives subject matter will be systematic and integrative within the particular perspectives discipline addressed, it will lack *interdisciplinary* comprehensiveness across the entire range and diversity of potential perspectives.

The solution to all three issues is to require a perspectives exposure that is as comprehensive as possible instead of one that is partial. Given other pressing curricular demands, it is unrealistic to require students to take more than one or two perspectives courses. However, they could reasonably be required to take one foundational general perspectives course addressing both the social and the cultural dimensions of law, or perhaps, instead, one course addressing the social dimensions and another addressing the cultural dimensions.<sup>258</sup>

The challenge is to design one or more general perspectives courses that would provide such comprehensive foundational perspectives coverage effectively, efficiently, and credibly.<sup>259</sup> Team teaching by

---

256. James P. Rowles, *Toward Balancing the Goals of Legal Education*, 31 J. LEGAL EDUC. 375, 385-86 (1981).

257. *Id.* at 386. Rowles is not discussing a perspectives course requirement *per se* but pointing out that the attitude even at the leading national schools that regard perspectives courses as desirable or even essential is ultimately not inconsistent with the belief, “widely shared at the lesser schools,” that such courses are just frills. However, his observations seem equally applicable to a requirement that students take one from a slate of perspectives courses.

258. Relevant transnational dimensions could also be included in the coverage of such course(s), although my own preference would be to devote a separate foundational required course to the transnational dimensions of law collectively, both those focused on “perspectives,” that is, comparative legal ordering, and those focused on the conduct and regulation of international business transactions and the regulation of migration flows. For further discussion of this distinction among the transnational dimensions, see *supra* note 137 and accompanying text.

259. Both the Perspectives on Law course at the University of British Columbia described in the Carnegie Foundation Report, *supra* note 245, and the redesigned Harvard Law School curriculum referenced in the Best Practices Study, *supra* note 246, apparently tend in this direction of trying to provide more comprehensive perspectives coverage in one required course or a limited number of required courses. Moreover, both the Kuklin and Stempel book, *supra* note 192, and the Crump book, *supra* note 197, support this same tendency. I have myself been working for some years on developing a set of teaching materials intended for a general perspectives course addressing the cultural dimensions

faculty with expertise in different perspectives disciplines holds promise in this regard,<sup>260</sup> but many faculties do not offer a breadth of perspectives expertise. Depending on staffing available, the required general course(s) would not necessarily replace the more specialized perspectives courses in the curriculum. Such course(s) could provide a foundation for subsequent, in-depth exploration in the specialized perspectives courses.<sup>261</sup>

---

of law and employing an approach that will serve to integrate these diverse perspectives (historical, jurisprudential, and comparative) within one overarching organizational framework. Only time will tell whether this ambition is foolishly hubristic or not.

260. The Perspectives on Law course at the University of British Columbia described in the Carnegie Foundation Report, *supra* note 245, is an example of this approach. For another example, see the elective “Perspectives on Law” course at the University of Minnesota School of Law, which is also team-taught: <http://www.law.umn.edu/prospective/curriculum.html> (last visited Jan. 25, 2012).

261. The foundational nature of such course(s) would be enhanced if they were placed in the first year, and even the first semester. Moreover, such course(s) could then even be presented as a “bridge from college” that would nicely balance the “bridge to practice” courses in the third year. Even in the absence of a perspectives requirement, such general perspectives course(s) would be a valuable addition to the law school curriculum.

In addition to considering the creation of foundational general perspectives courses, or locating a dedicated perspectives experience in the first year, or both, law schools may wish to consider other types of prudent reforms that would enhance the students’ learning experience and reduce their dissatisfaction with a dedicated perspectives course requirement. These reforms include the following: (1) Defining more clearly the purposes and values of perspectives courses; (2) Including in any Perspectives Block only those courses and seminars that serve such purposes and values; (3) Requiring faculty teaching perspectives courses to discuss content and methods with each other on an ongoing basis; and (4) Communicating to students more effectively these purposes and values and why faculty think it important for them to receive a dedicated perspectives exposure. Based on the discussion in this article I offer the following as one possible description of courses in a Perspectives Block:

This Law School is committed to exposing students to the broader dimensions of law and legal practice (that is, the political and social science dimensions, the historical, jurisprudential, and comparative dimensions, and the dimension of international legal order) through a required and sustained perspectives experience. By providing students with a broader perspective on the many different aspects of law and lawyering, perspectives courses (a) promote an understanding of the broader context of legal practice; (b) develop certain types of distinctive knowledge, skills, and dispositions needed to make more effective legal arguments, to engage in more effective law reform efforts, and generally to practice law in a legal environment characterized by increasing diversity and pluralism; (c) reinforce the qualities and values central to lawyer professionalism; and (d) further develop a sense of professional identity and meaningful work by enabling students to forge a connection to the animating purposes and accomplishments of the law and the legal profession.

One could also add the following to reinforce the practical and professional value of perspectives courses: “The doctrinal law that you learn in law school has a limited shelf life. Perspectives on the law are permanent. In that sense, perspectives courses can be

Whether a dedicated perspectives course is required or strongly recommended, wherever it is placed in the curriculum, and whatever its precise nature, it is essential that law schools communicate effectively and forcefully to students why it is important that they receive a serious and sustained perspectives exposure during their legal education. This will help to combat the influence of the neo-Langdellian prejudice as well as the absolutizing of “consumer choice.”<sup>262</sup>

## VI. CONCLUSION

In arguing for a perspectives course requirement, I have emphasized the importance of such a requirement to law schools’ primary mission of preparing students properly for the practice of law.<sup>263</sup> In closing, I would like to underline the importance of such a requirement to what I and many others regard as a significant secondary mission of law schools: to prepare students properly to serve as civic and political leaders in society.<sup>264</sup> Historically, lawyers have served in a wide

---

among the most practical courses that you can take while you are in law school.” Email of Feb. 28, 2012 from Lloyd Mayer to the Author describing Notre Dame’s perspectives recommendation (on file with Author).

262. Although the imposition of a perspectives course requirement or a collective institutional strong recommendation, and even a communication regarding the value of a serious and sustained perspectives exposure, may appear “paternalistic,” students deserve our best judgment regarding how their law school experience can best prepare them for the practice of law. It is instructive that already in 1994 (and surely the situation has not improved since then), Kuklin and Stempel contended that “too many students study law without adequate grounding in the liberal arts.” KUKLIN & STEMPEL, *supra* note 196, at 6. They reported their experience that “we cannot overemphasize the frequently found gaps in student knowledge. . . . Viewing the often ahistorical or foundationless perspective of students can sometimes be disconcerting or frightening from the front of the class.” *Id.* at 2-3. Observing that “[e]ven today’s bright students who attend prestigious high schools and colleges frequently seem not to be exposed to what we thought was standard liberal arts learning about philosophy, economics, history, psychology, sociology and political science,” they explain that they are not surprised given their own need to fill similar gaps in their own knowledge. *Id.* at 1. I can certainly relate given the need to fill many such gaps in my knowledge as well.

263. The argument has been premised on what I believe will remain an important vision of legal practice for a long time to come no matter what alternative visions develop based on the changing nature of lawyers’ work. For a good account of anticipated changes and corresponding alternative visions, and of the value of perspectives subject matter and courses in such plural visions, see Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649 (2011).

264. See, e.g., Ben W. Heineman Jr., *Lawyers as Leaders*, 116 YALE L.J. POCKET PART 266, 266-67 (2007), <http://yalelawjournal.org/images/pdfs/102.pdf> (arguing that “[t]he profession and the law schools should more candidly recognize the importance of leadership and should more directly prepare and inspire young lawyers to seek roles of ultimate responsibility and accountability than they do today” and observing that “today’s law

variety of leadership roles, ranging from positions of national importance, such as President or member of Congress, to positions of state and local importance, such as state legislator, board of education chair, and corporate CEO.<sup>265</sup> Lawyers are not the only citizens who lead, of course, but lawyers have always been central in leading the Republic throughout its history. This was true during the first phase in the historical development of legal education,<sup>266</sup> and it is true today. What lawyers have to offer as citizen leaders is the result of their being trained in ways that others generally are not.<sup>267</sup>

I believe that legal educators owe a responsibility to society to prepare practically wise citizen leaders, as well as practically wise legal practitioners, who possess the particular ensemble of substantive knowledge, practical skills, and qualities of character needed for such leadership.<sup>268</sup> Whether or not these extend beyond those required for

---

schools are muted or ambivalent about leadership”).

265. *Cf. id.* at 268 (discussing how “[l]awyers with vision and an ability to effect change have . . . played central roles in major historic events”).

266. *See Jones, Historical Framework Phase I, supra* note 2, at 1134-39, 1149-52 (discussing Robert Gordon’s account of the influence of elite “republican lawyer-statesmen” throughout American society and Russell Pierce’s claim that the “legal elite’s original and uniquely American understanding of the lawyer’s role was that lawyers were America’s governing class”) (quoting Russell Pearce, *Lawyers As America’s Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer’s Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 382 n.5 (2001)).

267. Although there are other causes as well, including structural causes, one important cause of the excessive partisanship, incivility, and lack of compromise that characterize much of contemporary politics in the United States may be the apparently waning influence of lawyers and traditional lawyerly virtues in our assemblies of public deliberation. For an illuminating discussion of some of the structural causes, see Fareed Zakaria, *A Way Out of Our Dysfunctional Politics*, WASH. POST, July 20, 2011, [http://www.washingtonpost.com/opinions/a-way-out-of-our-dysfunctional-politics/2011/07/20/gIQATEQcQL\\_story.html](http://www.washingtonpost.com/opinions/a-way-out-of-our-dysfunctional-politics/2011/07/20/gIQATEQcQL_story.html) (discussing how the “structure of politics” has changed over the last three or four decades “making it more beholden to narrow, specialized interests—including ideological ones—rather than broader national ones,” and identifying such factors as: the creation of safe seats through redistricting; the take-over of party primaries by small groups of activists; changes in Congressional rules making it much more difficult to enact large, compromise legislation by allowing lobbyists, money, and special interests far greater access to and influence over the legislative process; and the presence of a new narrowcast media that fuels polarization).

268. I also believe that this responsibility is enhanced due to law schools’ *de facto* credentialing role for leadership positions, that is, lawyers have greatly increased access to such leadership positions *simply because they are lawyers*—because they have acquired knowledge, skills, and qualities of character that are necessary for citizen leadership, and perhaps just as important, because they are perceived by others to have such attributes.

good lawyering,<sup>269</sup> the ensemble surely includes a familiarity with the social, cultural, and transnational dimensions of law acquired in a broad-based legal education that ensures serious and sustained perspectives exposure.<sup>270</sup> This was well understood during the first phase,<sup>271</sup> and it should be well understood today. Society needs lawyers who are truly ready to lead, and that means ones who possess a solid understanding of the animating purposes and accomplishments of the law and of politics and of how those purposes and accomplishments relate to pursuit of the common good.<sup>272</sup>

---

269. Jack Sammons's account of how the virtues of the good lawyer would be revealed in a community group conversation "even if the conversation had not afforded the lawyer the opportunity to display his or her knowledge of legal matters" might suggest that the attributes necessary for good lawyering suffice for good leadership. *See supra* note 67 and accompanying text. Others may consider that additional attributes are necessary. *See* Heineman, *supra* note 264, at 267 (identifying several "important qualities of mind that go beyond the core competencies taught in law schools").

270. *See* Heineman, *supra* note 264, at 268 (arguing that "[b]readth of mind is needed more than ever today because many young lawyers will have more careers than their predecessors, often as part of multi-disciplinary teams," and discussing the curricular exposures and experiences, and other programmatic changes including increased opportunities for joint degrees, that are needed to help students acquire the necessary breadth). Whatever the reader may conclude regarding Heineman's proposals for extensive curricular and programmatic reform designed to prepare lawyers for leadership, what I advocate in the present Article is a much more modest and, I believe, more realistic goal for most law schools, at least in the shorter term. Without wishing to be unduly controversial, one might offer the recent experience in Iraq as underscoring the importance of cultivating breadth of mind and an appreciation of complexity for practically wise leadership. *See, e.g.,* PETER W. GALBRAITH, THE END OF IRAQ: HOW AMERICAN INCOMPETENCE CREATED A WAR WITHOUT END (2006); PETER BEINART, THE ICARUS SYNDROME: A HISTORY OF AMERICAN HUBRIS 10-11, 337-65, 371-75 (2010); Medea Benjamin & Charles Davis, *From 'Liberation' to Occupation: 10 Reasons Iraq Was No Cakewalk*, HUFFINGTON POST, Mar. 17, 2011, [http://www.huffingtonpost.com/medea-benjamin/ten-reasons-the-iraq-war-\\_b\\_836910.html](http://www.huffingtonpost.com/medea-benjamin/ten-reasons-the-iraq-war-_b_836910.html).

271. *See supra* notes 44-45 and accompanying text (explaining that, in considerable part due to the influence of the lawyer-statesman ideal and the underlying political philosophy of civic republicanism, most legal educators during the first phase provided a broad-based education in order to prepare their students both for legal practice and for political leadership).

272. Heineman strikes a hopeful note regarding the potential for lawyers to find a sense of calling, purpose, and identity in their role as leaders. *See* Heineman, *supra* note 264, at 270:

I believe that the lawyer as leader is an ideal that can be realized. At the least, the quest can be a key to a fulfilled professional life, to a life that merges who we are and what we do. Today is a wonderful time to be blessed with legal training and to be able to go out and take on the enormous challenges of a difficult world—with an aspiration to lead tempered by humility at the complexity, difficulty, discipline, and self-sacrifice inherent in the task.

*Id.*

In sum, law schools owe it to their students, the legal profession, and society to provide a holistic legal education that prepares the “complete lawyer” for legal practice and for citizen leadership by ensuring that a properly balanced treatment of all six sets of fundamental dimensions of law and lawyering is integrated within law school programs.<sup>273</sup> This includes designing a serious, sustained, and effective perspectives exposure.<sup>274</sup> This is our responsibility as we form the souls of our

---

273. Perhaps in this way we will usher in a fifth phase in the historical development of U.S. legal education—the integrative phase (or perhaps, more accurately, the re-integrative phase)—in which all six sets of fundamental dimensions are properly integrated in an appropriately balanced manner in the practically wise development of law school programs and in which, moreover, various competing jurisprudential paradigms are properly integrated in an appropriately balanced manner in practically wise legal reasoning. For identification of prior phases in the historical development of U.S. legal education, see *supra* Part II.B. and accompanying notes, especially notes 49, 51. For identification of competing jurisprudential paradigms that have emerged during this development, see *supra* text accompanying notes 32, 35. See also Jones, *Historical Framework Phase I*, *supra* note 2, at 1203 n.586.

274. It is possible to make an additional case for the value of a serious, sustained, and effective perspectives exposure, although it is not one upon which I rely in this Article, and that is the case made by Daniel Boorstin in a seminal article over sixty years ago regarding the relevance of perspectives subject matter to the study of law not in a “pragmatic spirit” but “in the humane spirit.” See Daniel Boorstin, *The Humane Study of Law*, 57 *YALE L.J.* 960 (1948). Thus, studying law “in the humane spirit” means that studies are based on “intellectual curiosity, imagination, and interest,” allowing

the nature and development of legal institutions [to] be examined in many different ways, with the fullest regard for the complex totality of man’s past and present, material and spiritual concerns; and not with an eye solely for the utility of such investigations for improving the skills of the practising lawyer, or for guarding the interests of particular clients (whether individuals or groups), or for maximizing immediate social goods.

*Id.* at 965. Boorstin explains further:

The humane study of law would at least try to bring the study of the legal past and present into relation with the whole human being, with his striving for a moral order as well as his scramble to satisfy his material interests. In this way such an approach (compared with the pragmatic view) would be at once more objective (that is, more attentive to the whole of man as he actually is), and more normative, since it makes the study of law more effectively a part of our quest for what is essentially human. It would at the same time relax and enrich the intellectual atmosphere in which legal institutions are to be studied—or perhaps even practised—and it would lead us freely into the neglected fields of comparative law, into the past of many nations, and into the whole context, physical, social and spiritual, of human life.

*Id.* at 975. Boorstin was not advocating reform of the law school curriculum “in the humane spirit” but rather that higher education should make a place for the study of law in this spirit (in interdisciplinary graduate programs, for example). *Id.* at 972-73. However, his portrayal captures something of the additional benefit experienced by students who receive serious and sustained perspectives exposure along the lines suggested in this Article,

2012]

*LAW AND LEGAL EDUCATION*

1055

students and thereby make our distinctive contribution to the common good of the Republic.

---

beyond the pragmatic value of such exposure in preparing lawyers directly for legal practice and for citizen-leadership.